LABOUR RELATIONS BOARD OF B.C.

ANNUAL REPORT 1981

A N N U A L R E P O R T

of the

LABOUR RELATIONS BOARD OF BRITISH COLUMBIA

FOR THE YEAR

1 9 8 1

LABOUR RELATIONS BOARD OF B.C.
1275 WEST 6TH AVENUE, VANCOUVER, B.C. V6H 1A6 / 736-2421

LETTER OF TRANSMITTAL

February 28, 1982

The Honourable Jack Heinrich
Minister of Labour
Victoria, B.C.

Dear Sir:

As provided in Section 151 of the Labour Code, I have the honour to submit herewith the eighth Annual Report of the Labour Relations Board of British Columbia for the year ended December 31, 1981.

Yours very truly,

Stephen F.D. Kelleher
Chairman

SFDK/sc

LABOUR RELATIONS BOARD OF BRITISH COLUMBIA

MEMBERS

(as of December, 1981)

Donald R. Munroe	Chairman
Ronald F. Bone	Vice-Chairman and Registrar
Rod Germaine	Vice-Chairman
Ben van der Woerd	Vice-Chairman
Angus Macdonald	Vice-Chairman
Gabriel M. Somjen	Vice-Chairman
Roy Gautier	Vice-Chairman
Stephen F.D. Kelleher	Vice-Chairman
Kenneth E. Albertini	Vice-Chairman
Brian Foley	Vice-Chairman
Allan E. Black	Vice-Chairman

Clarence J. Alcott	James McAvoy
Daniel Bell	Jack A. Moore
John Macdonald Billings	Nora Paton
John Brown	J. Raymond Pegley
Herbert Lowell Fritz	Douglas Quinn
John Fryer	Anthony D. Saunders
Jack Gerow	Arnold J. Smith
Charles C. Loyst	H. Henry Volkmann

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I. INTRODUCTION

Under the Labour Code, R.S.B.C. 1979, c.212, the Labour Relations Board is directed to report annually to the Minister on its activities. Section 151 states:

> 151. (1) The board may report to the minister, and shall report to him on his request and the minister may authorize the board to publish its report.
>
> (2) The board shall, on or before March 1 each year, make a report to the minister for the preceding calendar year, setting out briefly
>
> (a) all applications to the board under this Act and summaries of the findings of the board on them;
>
> (b) other matters the board considers to be of public interest in the discharge of its duties under this Act; and
>
> (c) other information the minister directs.
>
> (3) The report referred to in subsection (2) shall be laid before the Legislature if it is then in session; otherwise the report shall be laid before the Legislature within 15 days after the opening of the next ensuing session.

This requirement for a separate report by the Board reflects the creation under Part 2 of the Code of a labour board whose structure and wider responsibilities are distinct from those of labour boards created under previous legislation. In this eighth Annual Report on the Board's activities, we will follow the same basic format as was used in previous reports, dealing first with the main events affecting the Board during the past year, and then with the workload and pattern of decisions of the Board in the various areas of its responsibility in 1981. As well, we will recall certain events which highlighted labour-management relations in B.C. in 1981, and which were manifested in proceedings before the Labour Relations Board.

II. PERSONNEL

At the commencement of the report year, the complement of the Board was twenty-nine, composed of the Chairman: Donald R. Munroe; nine Vice-Chairmen: Ronald F. Bone (who also serves as Registrar), Rod Germaine, Ben van der Woerd, James M. MacIntyre, G. Bud Gallagher, Angus Macdonald, Gabriel M. Somjen, Roy Gautier and Stephen F.D. Kelleher; and nineteen part-time Members: Clarence J. Alcott, Daniel Bell, John Macdonald Billings, John Brown, Brian Foley, Herbert Lowell Fritz, John Leslie Fryer, Jack Gerow, Michael Lawrence Kramer, Graham D.M. Leslie, Charles C. Loyst, James McAvoy, Kenneth R. Martin, Jack A. Moore, Nora A. Paton, J. Raymond Pegley, Anthony D. Saunders, Arnold J. Smith, and H. Henry Volkmann.

From that time, and up to January 31, 1982, there were several changes in the composition of the Board which resulted in a complement of twenty-four as of that date. Chairman Donald R. Munroe left the Board to assume teaching duties at the Faculty of Law of the University of Victoria. Vice-Chairman Stephen F.D. Kelleher was appointed Chairman of the Board. Vice-Chairman James M. MacIntyre left the Board to return to the Faculty of Law at the University of British Columbia. Vice-Chairman G. Bud Gallagher departed the Board to resume a private law practice. Vice-Chairman Roy Gautier left the Board to assume the Presidency of the British Columbia and Yukon Territories Building and Construction Trades Council. In addition, Graham D.M. Leslie, Michael Lawrence Kramer, Kenneth R. Martin, J. Raymond Pegley and Arnold J. Smith left the Board when their terms of appointment as Board Members expired. The Board's roster of Vice-Chairmen was increased with the appointments of former Board member Brian Foley, Kenneth E. Albertini and Allan E. Black. Douglas Quinn and Wayne Carkner were appointed as Board Members.

So, as of January 31, 1982, there were twenty-four appointed Members, while the administrative and legal staff numbered forty-one.

Section 22 of the Code requires that the principal office of the Board be at or near Vancouver, the central location for labour relations activities within the Province. Since October 26, 1979, the Board's offices have been located at 1275 West 6th Avenue, in the City of Vancouver. They were formerly located at 1620 West 8th Avenue, in the City of Vancouver.

III. RESPONSIBILITIES OF THE BOARD

The history and details of the Board's responsibilities under the Labour Code and the British Columbia Labour Relations Board Regulations were extensively discussed in the 1974 Annual Report. The 1975 Report presented three Tables providing: an historical record of the Labour Code and its amendments (Table A); statutes conferring authority on the Board (Table B); and the Regulations made pursuant to the Code (Table C). In 1977, a new table was added setting out those statutes which affect the Board's authority (Table D.).

In the 1980 Report only, a brief table of concordance had been included to indicate changes in titles and chapter designations of the statutes listed in Tables A to D, as a consequence of the proclamation of the Revised Statutes of British Columbia (R.S.B.C.) 1979. This revision and consolidation of the Public General Acts of British Columbia included certain changes in the title, language and structure of the Labour Code, as well as in many other public acts of British

Columbia. The stated purpose of these changes was to provide a more uniform mode of expression in the public statutes and not for the purpose of effecting substantive changes in the law. Some pre-1979 statutes listed in Tables A to D were not included in the R.S.B.C. 1979 consolidation (they were indicated in Table E of the 1980 Report as "not consolidated"). Despite their absence from the consolidated statues, these acts remain in full force and effect until repealed.

In addition to its mandate under the Labour Code, the Board has been charged with the responsibility in labour relations matters under fourteen other statutes (Table B). By virtue of the Public Service Amendment Act, 1980, S.B.C. 1980, c.46, that part of the Public Service Act establishing the Public Service Adjudication Board, its jurisdiction and the right of parties to appear before it has now been repealed. The transitional provisions in Section 8 of the Public Service Amendment Act, 1980 allow the parties to decide how matters which were previously before the Public Service Adjudication Board are to be completed; in the absence of agreement, that Section allows for the disposition of those matters in accordance with Part 6 of the Labour Code. As a result, the Labour Relations Board has now assumed the general superintendency of the public service arbitration process and matters which previously fell within the jurisdiction of the Public Service Adjudication Board will now be heard by arbitrators on the panel of arbitrators in respect of the collective bargaining relationship between the Government of British Columbia and the British Columbia Government Employees' Union.

TABLE A

STATUTORY HISTORY OF THE LABOUR CODE

(1) THE LABOUR CODE

Statute	Date and Manner of Coming into Force	Sections in Force	B.C. Gazette References
Labour Code, R.S.B.C. 1979, c.212 (formerly Labour Code of British Columbia, S.B.C. 1973, (2nd Sess.), c.122)	November 13, 1973 Proclamation	12, 26, 124, 139, 140, 150	Reg. 424/74, Pt. II, V.16, p.645
	December 20, 1973 Proclamation	21, 55	Reg. 12/74, Pt. II, V.17, p.158
	January 14, 1974 Proclamation	1-11, 13-20, 22-25, 27-30, 32-54, 56, 59-69, 73, 92-112, 122, 123, 125-127, 138, 141-149, 150A, 151(a), 152	Reg. 41/74, Pt. II, V.17, p.192
	January 24, 1974 Proclamation	70-72	Reg. 53/74, Pt. II, V.17, p.195
	March 1, 1974 Proclamation	74-78	Reg. 154/74, Pt. II, V.17, p.407
	March 14, 1974 Proclamation	113-121A	Reg. 174/74, Pt. II, V.17, p.433
	August 15, 1974 Proclamation	57, 58	Reg. 578/74, Pt. II, V.17, p.949
	September 2, 1974 Proclamation	31, 79-91	Reg. 606/74, Pt. II, V.17, p.998
	September 16, 1974 Proclamation	151(b) and (c)	Reg. 682/74, Pt. II, V.17, p.1116

TABLE A CONT'D.

STATUTORY HISTORY OF THE LABOUR CODE

(2) AMENDING ACTS

Statute	Date and Manner of Coming into Force	Sections in Force	B.C. Gazette References
Statute Law Amendment Act, 1974, S.B.C. 1974, c.87, s.22	October 14, 1974 Proclamation	22(a) (among others)	Reg. 709/74, Pt. II, V.17, p.1158
	June 20, 1974 Royal Assent	22(b) - 22(i) (among others)	N/A
Essential Services Continuation Act, S.B.C. 1974, c.108, s.6	August 9, 1974 Royal Assent	6 (among others)	N/A
Elevator Construction Industry Labour Disputes Act, S.B.C. 1974, c.107, s.6	November 26, 1974 Royal Assent	6 (among others)	N/A
Labour Code of British Columbia Amendment Act, 1975, S.B.C. 1975, c.33	June 26, 1975 Royal Assent	1-6, 8-33	N/A
	January 14, 1974 Retroactive Effect	7	N/A
Labour Code of British Columbia Amendment Act, 1976, S.B.C. 1976, c.26	June 30, 1976 Royal Assent	1-8	N/A
Miscellaneous Statutes Amendment Act, 1976, S.B.C. 1976, c.32	July 8, 1976 Proclamation	12A	Reg. 391/76, Pt. II, V.19, p.511

TABLE A CONT'D.

STATUTORY HISTORY OF THE LABOUR CODE

(2) AMENDING ACTS

Statute	Date and Manner of Coming into Force	Sections in Force	B.C. Gazette References
Labour Code of British Columbia Amendment Act, 1977, S.B.C. 1977, c.72	September 27, 1977 Royal Assent	1-12	N/A
Ministerial Titles Amendment Act, S.B.C. 1977, c.75	October 21, 1977 Proclamation	Sch. I, Ss. 8(2), 127(3), 129(a), 136, 137(1)(a)	N/A
Essential Services Disputes Act, S.B.C. 1977, c.83	October 28, 1977 Proclamation	19 repeals 73(1) to (6)	N/A
Miscellaneous Statutes Amendment Act, 1978, S.B.C. 1978, c.28	July 6, 1978 Proclamation	11 amends 69	N/A
Financial Administration Act, S.B.C. 1981, c.15	November 26, 1981 Proclamation	117 repeals 139(2)	Reg. 468/81, Pt. II, v.24, p.981

TABLE B

STATUTES CONFERRING AUTHORITY ON THE LABOUR RELATIONS BOARD

Statute	Date and Manner of Coming into Force	Sections in Force	B.C. Gazette References
Labour Code, R.S.B.C. 1979, c.212	Refer Table A	1-127, 138-154	
Public Service Labour Relations Act, R.S.B.C. 1979, c.346	January 3, 1974 Proclamation	1-14, 17-28 (amendments to ss.4, 11 and 17 yet to be proclaimed)	Reg. 14/74, Pt. II, v.17, p.160
Assessment Authority Act, R.S.B.C. 1979, c.22	June 20, 1974 Royal Assent	21 (among others)	N/A
Institute of Technology Act, R.S.B.C. 1979, c.199	July 4, 1974 Proclamation	7	Reg. 485/74, Pt. II, v.17, p.788
Community Resource Board Act, R.S.B.C. 1979, c.58	November 21, 1974 Proclamation	4	Reg. 781/74, Pt. II. v.17, p.1209
Elevator Construction Industry Labour Disputes Act, S.B.C. 1974, c.107	November 26, 1974 Royal Assent	3, 5 (among others)	N/A
Hospital Services Collective Agreement Act, S.B.C. 1976, c.31	June 9, 1976 Royal Assent	7 (among others)	N/A
Ferry Corporation Act, R.S.B.C. 1979, c.128	June 30, 1976 Royal Assent	23 (among others)	N/A

TABLE B CONT'D.

STATUTES CONFERRING AUTHORITY ON THE LABOUR RELATIONS BOARD

Statute	Date and Manner of Coming into Force	Sections in Force	B.C. Gazette References
Railway and Ferries Bargaining Assistance Act, S.B.C. 1976, c.48	June 15, 1976 [s.22(1)] Royal Assent on June 14, 1976	Part II (6-14)	N/A
	February 3, 1977 Proclamation	1, Pt. I (2-5)	Reg. 44/77, Pt. II,v.20, p.198
B.C. Buildings Corporation Act, 1977, S.B.C. 1977, c.32	August 18, 1977 Royal Assent	16A (among others)	N/A
System Act, R.S.B.C. 1979, c.399	September 1, 1977 Proclamation	17 (among others)	Reg. 349/77, Pt. II, v.20, p. 665
Essential Service Disputes Act, R.S.B.C. 1979, c.113	October 28, 1977 Proclamation	1-18 (and schedule)	Reg. 465/77, Pt. II, v.20 p.853
College and Institute Act, R.S.B.C. 1979, c.53	December 15, 1977 Proclamation	30 (part of which not yet proclaimed), 42 (among others)	Reg. 607/77, Pt. II, v.21, p.357
West Kootenay Schools Collective Bargaining Assistance Act, S.B.C. 1978, c.42	December 9, 1978 Royal Assent	10 (among others)	N/A
	January 15, 1979 Proclamation		Reg. 8/79, Pt. II, v.22, p.130
Public Service Amendment Act, S.B.C. 1980, c.46	August 21, 1980 Royal Assent	6-8 (among others)	N/A

TABLE C

REGULATIONS UNDER THE LABOUR CODE*

Effective Date	Regulation No.	B.C. Gazette References
December 28, 1973	1-36	Reg. 522/73, Pt. II, V.17, p.26
March 14, 1974	Amending Reg. 522/73	Reg. 162/74, Pt. II, V.17, p.410
September 4, 1974	37-43	Reg. 601/74, Pt. II, V.17, p.968
November 28, 1974	Amending Reg. 601/74 and 522/73	Reg. 786/74, Pt. II, V.17, p.1202
September 24, 1975	44	Reg. 616/75, Pt. II, V.18, p.861
December 22, 1976	45-47	Reg. 667/76, Pt. II, V.20, p.100
March 1, 1978	48-79	Reg. 39/78, Pt. II, V.21, p.437
August 19, 1978	80	Reg. 380/78, Pt. II, V.21, p.1074
November 27, 1979	17(2)	Reg. 541/79, Pt. II, V.22, p.1091

* The Lieutenant-Governor in Council is empowered by Section 150 of the Labour Code to make regulations and orders for the purpose of carrying out the provisions of the Act according to their intent. The regulations are cited as the British Columbia Labour Relations Board Regulations.

TABLE D

STATUTES AFFECTING LABOUR CODE

Statute	Date and Manner of Coming into Force	Sections in Force	B.C. Gazette References
University Act, R.S.B.C. 1979, c.419	October 7, 1977 Proclamation of s.38 Miscellaneous Statutes Amendment Act, 1977, S.B.C. 1977, c.76	80	Reg. 434/77, Pt. II, v.20, p.767

IV. AMENDMENTS TO THE CODE AND THE PUBLIC SERVICE LABOUR RELATIONS ACT

The greatest part of the Board's workload is generated by proceedings under the Labour Code. The Code was first enacted in 1973 and proclaimed in force in several stages throughout 1974. Since that time, it has been revised and clarified through various amendments. Some of these involved major substantive changes while others were purely technical refinements. The most extensive revisions were made in the Amendment Acts of 1975 (Bill 84), 1976 (Bill 77) and 1977 (Bill 89). No substantive revisions were made to the Code in this report year.

The Labour Code was also affected by the proclamation of the Revised Statutes of British Columbia, 1979, discussed earlier in Chapter III. The statute is now found at Chapter 212 of the consolidated statutes. Changes have also been made to some of the language of the Code and to its format, in keeping with the objectives of the Revised Statutes Act: to preserve a uniform mode of expression. This has resulted, among others, in changes in spelling, punctuation, capitalization, type and sentence structure in those statutes, including the Code, which have been included in the consolidation.

The administration of the Public Service Labour Relations Act, which regulates collective bargaining between the Province of British Columbia as an employer and members of the public service as its employees, falls under the auspices of the Labour Relations Board. As was the case with the Code, the Public Service Labour Relations Act has been included in the Revised Statutes of British Columbia, 1979 at c.346.

V. HIGHLIGHTS

A. Strikes and Picketing

The 1981 report year has seen an unprecedented number of complaints and applications under Part 5 of the Code: as compared with 305 complaints and applications filed during 1980, 573 were received by the Board in 1981. The Board held 216 formal hearings involving Part 5 matters and issued 95 decisions with reasons. The large volume of applications strained the Board's ability to resolve disputes at an informal level; even so, 301 of the Part 5 applications were settled prior to a formal hearing.

These Part 5 applications were mainly generated by three key disputes. The first was a dispute between the Telecommunications Workers' Union and British Columbia Telephone Company, which began in the autumn of 1980 and continued into 1981. That dispute led to the filing of 59 applications in 1981 alone. The strikes against municipal employers in the Lower Mainland, which took place during the first half of the year, accounted for 110 applications to the Board. The third dispute involved the forest industry. It generated 97 applications under Part 5 of the Code. There were, of course, other labour disputes which contributed to the Board's workload: those involving the cement industry and the Insurance Corporation of British Columbia were two notable examples.

In the course of dealing with the various Part 5 applications, the Board canvassed a number of issues. Provisions of the Code dealing with the ally doctrine and the employer's place of business, operations or employment were re-examined in some depth. The Board analyzed what factors it took into account in exercising its discretion to limit picketing

affecting a party carrying on business at the same site as an employer involved in a strike or lockout. This had particular significance for the construction industry, as a number of construction companies and their employees were engaged in work on sites at which employers involved in a labour dispute were present. As a consequence of the strikes against the Lower Mainland municipalities, the Board had to weigh the different "pressure points" involved in a dispute in the public, as opposed to the private, sector. Applications which were a result of the strike against British Columbia Telephone Company required the Board to consider the extent and nature of its jurisdiction to deal with the effects of a federal dispute on provincial operations. It is hoped that the Board's resolution of these many issues will provide guidance for the labour relations community in the future.

B. The Duty to Bargain in Good Faith

A number of interesting and difficult issues arose during the report year in the context of the Board's jurisdiction to enforce the duty to bargain in good faith. That duty is found in Section 6 of the Labour Code which provides that "... a trade union or employer shall not fail or refuse to bargain collectively in good faith in the Province and to make every reasonable effort to conclude a collective agreement ...".

The number of applications under this Section increased over last year and, while the majority of these complaints were settled on a voluntary basis, seven cases required formal adjudication by the Board. The complexity of some of these cases required the Board to refine and clarify its approach to the duty to bargain in good faith.

A number of decisions dealt with the interplay of other provisions of the Labour Code with the duty to bargain in good faith. For example, in Vancouver Talmud Torah Association, BCLRB No. L65/81, the employer sought to include a clause in the collective agreement which would deny employees, in certain circumstances, access to the grievance and arbitration process. The Board found that such a clause would be contrary to the Labour Code (see Section 93) and the employer's insistence on that clause would be bargaining in bad faith.

Two related decisions dealt with the relationship between the commission of other unfair labour practices and the duty to bargain in good faith.

In Northwest Weight Loss Clinics Ltd., BCLRB No. 26/81; [1981] 2 Can LRBR 143, the Board found that the employer was guilty of coercion or intimidation in violation of the unfair labour practice provisions of the Code. While the union acknowledged that the employer's conduct at the bargaining table appeared unobjectionable, it argued that the employer's unrealistic bargaining position coupled with its unlawful "away from the table" conduct amounted to bad faith bargaining. Since a remedial order was issued in respect of the other unfair labour practice complaints, it was unnecessary to deliberate on that aspect of the case at that time. However, this issue was raised again in Northwest Weight Loss Clinics Ltd., BCLRB No. 54/81. No meaningful negotiations had taken place since the Board's previous decision and the union again alleged a breach of Section 6. The employer had taken the position that there was no purpose to be served by meeting or increasing its monetary offer since the parties were so far apart on the wage issue. The union argued that since the employer had been found guilty of unfair labour practices, there was an onus on the employer to demonstrate affirmatively

its renewed intention to bargain collectively. The Board held that while its previous findings that the employer committed unfair labour practices should be taken into account, they did not create any special obligation on the employer to bargain in a different manner. An employer found in violation of the unfair labour practice provisions of the Code was still permitted to engage in hard bargaining.

The Muckamuck Restaurant Ltd. case, BCLRB No. 27/81; [1981] 2 Can LRBR 181, dealt with whether the employer's involvement in an application for decertification (see Section 52) could constitute bad faith bargaining. The Board found that the employer's total bargaining conduct revealed an absence of any desire to settle an agreement and was a breach of Section 6. An important consideration in this case was the employer's involvement in a decertification effort by staff working behind union picket lines. The Board found that conduct to be totally inconsistent with any recognition by the employer of the union as the bargaining agent for its employees and any willingness on the part of the employer to bargain in good faith with the union.

In Windermere Central Park Lodge, BCLRB No. 35/81; [1981] 2 Can LRBR 345, the Board dealt with whether the employer's suggestion that a union bargain directly with the government was a breach of the duty to bargain in good faith. The employer's operations depended to some extent on funding from the Ministry of Health. During bargaining, the employer suggested that the union seek assistance from the Ministry. The employer did not, however, refuse to negotiate or continue meeting. The Board held that the employer's purpose in making that suggestion was not to stifle discussion and was not a breach of the duty to bargain in good faith. However, in its reasons, the Board did express concerns about three other circumstances. First, the

Board indicated that the Code required that a resident of British Columbia be given the authority to bargain and to negotiate and execute a collective agreement. Second, where an employer resisted economic demands at the bargaining table by arguing that it was unable to afford such demands, the duty to bargain might require disclosure of financial information to the union. Third, where a struck employer hired strike replacements, it might be in breach of the duty to bargain in good faith if it paid the strike replacements a higher rate of pay than it had offered the union at the bargaining table.

The Board's innovative and flexible approach to the issue of remedies was canvassed in Kamloops News Inc., BCLRB No. 36/81; [1981] 2 Can LRBR 356. In that case, the effect of the employer's conduct had seriously undermined the bargaining strength of the union; the employer was found to be in breach of Section 6. In dealing with the question of remedies, the Board stated that in administering the unfair labour practice provisions of the Code, it would fashion compensatory remedies which were responsive to the particular circumstances of each case. In this case, the union was prevented from achieving its collective bargaining objectives because of the employer's unlawful conduct. The Board therefore directed the employer to agree to the union's demand on union security.

C. New Developments and Administrative Procedures in Section 7(1)

Effective January 1, 1981, the Board instituted a new procedure with respect to complaints alleging a violation of Section 7(1) of the Labour Code. Prior to the report year, there had been two procedural systems for Section 7(1)

complaints. Initially, complaints under Section 7(1) had been treated in the same manner as other proceedings under the Code. The complaint would be interchanged, submissions were invited, an investigator was appointed, an informal and, in some cases, a formal hearing would be scheduled. Latterly, a different system had been utilized. Upon receipt of the complaint, the Board would appoint an investigator. Only after receipt of the investigative report would a decision be made with respect to whether the complaint would be formally processed. If, at that stage, it appeared that there was no prima facie basis for the complaint, it would be dismissed. If a prima facie case were disclosed, the respondent(s) would be formally notified, submissions would be exchanged and perhaps a hearing would follow. Contrary to expectations, the latter informal approach did not affect the settlement rate in a significant way.

Section 7(1) complaints fall roughly within two categories: 1) complaints about contract interpretation or administration; and 2) complaints about termination, including long-term lay-off. There is more urgency to complaints in the second category because the employee is unemployed and, at the same time, the employer and the trade union are potentially exposed to accumulating back pay.

To reflect the different nature of the two types of Section 7(1) complaints, separate procedures for handling them were implemented in the report year. Section 7(1) complaints involving contract interpretation and administration are again dealt with under the original procedural format. Upon receipt of such a complaint, the Board formally notifies all interested parties, requests their submissions and conducts an investigation as it would for most complaints under the Code.

With respect to Section 7(1) complaints involving terminations, a new and more expedited procedure has been employed on an experimental basis. This procedure is modelled on the expedited procedure introduced in the 1980 report year for complaints under Section 3(3)(a) or (c), involving a termination. In order to lodge a complaint under the new procedure, the complainant must file a specified form which provides the Board with relevant information. A copy of the form, together with the document known as a Notice of Proceedings, is then forwarded to the trade union and the employer. The Notice of Proceedings serves to give the respondents notice of the following: the complaint, the date by which written submissions must be received (typically, 10 days following receipt of the complaint), the informal hearing date (generally, 14 to 21 days following receipt of the complaint), and the formal hearing date (to be held approximately four to six weeks following receipt of the complaint). Obviously, if the complaint is settled prior to the formal hearing, that hearing is cancelled.

At the same time as the complaint is acknowledged and interchanged, a panel chairman is appointed. That panel chairman, in addition to presiding over the formal hearing, is available to deal with any pre-hearing applications which arise.

The new expedited procedures for Section 7(1) complaints involving termination have resulted in a reduction of time between the filing of a complaint and its final disposition. This is apparent when a comparison is made between the 12-month periods preceding and following the implementation of the new procedures.

COMPLAINTS ALLEGING A VIOLATION OF
SECTION 7(1) INVOLVING A TERMINATION

		Complaints Filed From January 1, 1980 to December 31, 1980	Complaints Filed From January 1, 1981 to December 31, 1981
(1)	Total Number of Complaints Filed	32	18
(2)	Number of Complaints		
	Settled	14	11
	Requiring a Board Decision	17	5
	Outstanding	1	2
(3)	Median Number of Working Days to Dispose of Complaints	69	58.5

Two of the more interesting Section 7(1) decisions which the Board rendered during the report year were Ruby Chow -and- Overwaitea Foods, A Division of Jim Pattison International Ltd. -and- Retail Clerks Union, Local No. 1518, BCLRB No. 45/81; [1981] 3 Can LRBR 43, and Margaret Cameron -and- Teamsters Local Union 213 -and- Shuswap Okanagan Dairy Industries Co-Operative Association, BCLRB No. 46/81; [1981] 2 Can LRBR 435.

In Ruby Chow, the complainant alleged that the union breached its duty under Section 7(1) by refusing to take her suspension grievance to arbitration. The complainant refused the employer's offer of reinstatement, but nevertheless wished the union to pursue her grievance in order to recover lost wages for the period of the suspension. The union sought legal advice and was informed that the complainant's decision not to return to work would destroy any chance of winning at arbitration. On the basis of that advice, the union refused to proceed with the grievance. The Board held that, in handling the complainant's grievance, the union did not act

in a manner that was arbitrary, discriminatory or in bad faith. The Board reviewed the prima facie merits of the complainant's case and concluded that the union was not justified in its view that the complainant's refusal to work precluded any chance of success at arbitration. However, a union was not required to be correct in its assessment of the merits of a grievance, so long as it took a reasonable and considered view of the problem before it and arrived at a thoughtful judgment about how to proceed. The Board concluded that, in the circumstances, it was reasonable for the union to refer the matter to its solicitors and to act on their advice. Having done so, the union discharged its duty to the complainant under Section 7(1) of the Code.

The Margaret Cameron decision* concerned a complaint by a 64-year-old female grievor regarding the union's handling of her reclassification, severance pay and seniority grievances. With respect to the latter claim, the complainant took the position that she was entitled to displace a junior employee at another location of the employer. The union settled the grievance on the basis that the employer would offer the applicant substantial severance pay. It was the union's judgment that if the complainant attempted to displace the employee at the other operation, she would not be capable of performing the heavy physical labour associated with that position and would be dismissed for inadequate work performance, thereby jeopardizing her claim to severance pay. The Board concluded that the union did not act arbitrarily or in bad faith in representing the complainant; it had acted with the best of intentions. However, the duty imposed by Section 7(1) encompasses the duty to refrain from acts of discrimination prohibited by the Human Rights Code of B.C. By treating the

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* An application for reconsideration of this decision is pending.

complainant's seniority grievance differently, because of her age and sex, than it would have treated the grievance of other employees, the union contravened the Human Rights Code and breached Section 7(1) of the Labour Code. The union was ordered to pay the applicant the amount which she would have earned working in the new position until her retirement, less any amount paid to her as severance pay.

VI. THE WORK OF THE BOARD IN 1981

In 1981, the Board received 6004 applications. This caseload represents an increase from the 1980 figure of 4419. The Board disposed of 5560* applications in 1981, also an increase from the 4426 applications disposed of in 1980. (The statistical assumptions on which these and other figures are based are stated at the beginning of the Appendix to this Report). This volume of cases must be administered by a Board which, under Section 13 of the Code, may legally sit at one time in any one of nine different Panel arrangements. To deal effectively with its workload, the Board has adopted certain procedural approaches which will be described in general terms here, before the details of the Board's decisions in 1981 are reviewed.

A large number of cases are processed on a strictly administrative basis. The application or complaint is investigated by an Industrial Relations Officer of the Ministry of Labour who files a report with the Board. This report, together with the submissions of the parties, is reviewed by a Panel of the Board, usually consisting of the Chairman or one of the Vice-Chairmen. In cases that are clear and uncontested a decision is made without a hearing.

In cases which are contested, the Board attempts to achieve a settlement before proceeding to the stage of a formal hearing and adjudication. This settlement procedure involves an attempt at mediation by the Industrial Relations Officer, by the Registrar and his staff, and/or by a Panel of the Board at a hearing. This policy is especially important in the following

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* Including some applications carried over from 1980.

areas of the Board's work: unfair labour practices, disputes under a collective agreement brought to the Board under Section 96(1), and strikes and picketing complaints. In these areas, the Board successfully achieves a voluntary accommodation in approximately two-thirds of the cases. (The exact figures in each category are reproduced later in the Report; see Table 4.)

Finally, significant and contested cases which are not settled may be the subject of a hearing before the Board. Hearings are conducted by a Panel consisting sometimes of three members, and sometimes of one. To accommodate the parties to a dispute, hearings are often held at their request on short notice and at various places throughout the province. In 1981, the Board held 420 formal hearings (an increase of 164 over the previous report year). In addition, the Board often arranges informal meetings between the parties and one or more Board members, with the intention of forestalling formal litigation.

In contested cases that are unresolved by the parties and which involve significant issues of policy, the Board's general practice has been to give extensive written reasons for its decision. These reasons explain the Board's finding to the immediate parties and lay down general guidelines about the Board's policy and interpretation of the Code. The reasons are made available to unions, employers, counsel, and other interested parties. Decisions which the Board believes will constitute important precedents for the future are published in a series entitled Canadian Labour Relations Boards Reports, published by Butterworth & Co. (Canada) Ltd.

In the 1981 report year, the Board continued its general practice with respect to the preparation of formal written decisions. In several important areas which have been the

subject of major decisions, the Board has explained in considerable detail the policy framework of the Code and the approach which the Board will take in dealing with the chief issues in those areas. As a result, subsequent disputes under these sections of the Code frequently do not require extensive analysis except for the purpose of explaining to the parties immediately concerned how the Board has reached its particular conclusion. In cases of this kind, the Board has adopted the practice of expressing its reasons in the form of a letter decision to the parties affected. While available on request, decisions in this form are not normally published for the general labour relations community.

Under Section 36 of the Labour Code, a large number of applications are made to the Board for variances in the details of an existing certification or accreditation (and these are dealt with later in this report).

> 36. The board may, on application by any person, or on its own motion, reconsider a decision or order made by it or by a panel under this Act, and may vary or cancel the decision or order.

In addition, requests for reconsideration of decisions of the Board are also handled through the vehicle of Section 36. In 1981, the Board received 173 applications for reconsideration of this latter kind -- essentially appeals -- and 171* such applications were disposed of in the year. Of these, 34 were withdrawn, 100 were dismissed, and 37 resulted in a change in the original decision. (See Part XIII of Table 1-4 and Table 13). Most of these consisted of appeals from decisions where there had been no hearing in the first instance.

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* Including some applications carried over from 1980.

The procedure for review of decisions by the Labour Relations Board is as follows. Where the Board decides to hold a hearing on the original application (or complaint), it sits and hears the case in a Panel consisting of either one or three members. Whether or not a hearing has been held, a party has fifteen working days from the issuance of the Board's decision to request reconsideration of that decision. In all cases, a Panel of the Board makes an initial determination about whether the stated basis for the reconsideration asserts a prima facie case for review of the original decision. Where a request for reconsideration is made, the parties are invited to file detailed written submissions, which can be developed further in oral argument if the Board decides to conduct a hearing. In a small number of cases which are of special significance to the labour relations community, the Board has invited representations from employer or trade union organizations to assist the Board in understanding the broader implications of its rulings.

This procedure for Board review provides a back-stop by which the Board is able to avoid or correct inadvertent errors and undo any miscarriages of procedural justice which may have occurred in the regular flow of its large caseload. It may also bring out into the open serious issues of law or policy which are implicit in the original decision and which a party contends have not been satisfactorily dealt with.

In 1981, like previous years, a significant proportion of applications did result in a revision of the original decision, indicating the procedure continues to provide effective and meaningful review of Board decisions.

"Success" Rate of Appeals

	1977	1978	1979	1980	1981
Total Applications Disposed Of	123	155	137	140	171
Number of These Withdrawn	33	34	24	18	34
Number of Applications Processed To A Final Decision	90	121	113	122	137
Number of Applications Resulting In A Revision Of the Original Decision	31	31	33	46	37
"Success" Rate of Appeal	34%	26%	29%	38%	27%

With this preface regarding the Board's caseload and method of operation, we can now turn to the major areas of the Board's jurisdiction.

A. Certifications

The largest group of decisions made by the Board is in respect of applications for certification brought under Section 39* of the Code.

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* s.39. (1) Where a collective agreement is not in force and a trade union is not certified as bargaining agent for a unit appropriate for collective bargaining, a trade union claiming to have as members in good standing not less that 45% of the employees in that unit may at any time, subject to the regulations, apply to the board to be certified for the unit.

(cont'd.)

S.39 Cont'd.

(2) A trade union claiming to have as members in good standing a majority of employees in a unit appropriate for collective bargaining may, subject to the regulations, apply to the board to be certified for the unit where

(a) a collective agreement is not in force, and either

(i) 6 months have elapsed since the date of certification of a trade union for the unit; or

(ii) the board has consented to an application before the expiry of the 6 months; or

(b) a collective agreement is in force, only during the period.

(3) Notwithstanding subsection (2), where

(a) one or more applications have been made during a period, regardless of the outcome; or

(b) the board, pursuant to section 57(3), certifies a council of trade unions as bargaining agent for a unit, or varies a certification by substituting for the trade union or trade unions named in it a council of trade unions as the bargaining agent for a unit,

a trade union may not apply to be certified for that unit or, in the case of a council of trade unions, for a constituent part of the unit, until the second period after the date of the application, the certification or the variation of a certification, whichever is latest.

(4) Notwithstanding subsections (2)(b), 3(a) or 3(b),

(a) a trade union that is a party to a collective agreement, but is not certified for the employees covered by it, may apply to be certified at any time; and

(b) a council of trade unions comprised of trade unions that are parties to collective agreements may apply to be certified at any time in place of those trade unions,

(5) Two or more trade unions claiming to have together as members in good standing a majority of employees in a unit appropriate for collective bargaining may join in an application under this Part, and the provisions of this Act relating to an application by one trade union, and all matters or things arising from it, apply to the application and those trade unions as if one trade union were applying.

(6) In this section "period" means the seventh and eighth months in each year of a collective agreement or a renewal or continuation of it.

Section 39 provides for two different kinds of applications, each with its own legal requirements. Under Section 39(1), a union may seek certification for a group of previously unorganized employees, i.e. those not subject to an existing certification or collective agreement. Section 39(1) provides that, in order for a union to make such an application and be entitled to at least a representation vote, it is required to have a minimum membership support of 45%. Section 39(2) provides that a union may seek certification for a group of employees already represented by another union. The minimum membership requirement in such cases is more than 50% and the application is subject to certain timing requirements, i.e. it must be made at specified intervals following the earlier certification or during the term of a collective agreement. Section 39(5) makes special provision for a joint application for certification by a number of unions. This Section was used three times in the report year 1981.

The Board processed 848 certification applications in 1981. This represents an increase from the 790 applications processed in the report year 1980. Of the 848 applications processed in 1981, 114 were withdrawn (for a variety of reasons) leaving 734 to be formally decided by the Board. The majority of this number, 684 to be exact, were applications made in respect of previously unorganized employees. The remainder, 50 in number, were brought pursuant to Section 39(2) and involved employees then represented by another union.

Of the 684 applications under Section 39(1), a total of 62 were dismissed for reasons enumerated in Table 7. A total of 22 applications were found to be beyond the Board's jurisdiction, either on constitutional grounds or based on the definition of "unit" and/or "trade-union". In another 14 cases, applications

were rejected in circumstances either where the employees were to be represented by a different union or where a certification was varied to cover a larger unit which included the previous unit description. Accordingly, of those cases within the Board's jurisdiction, 26 certification applications (4%) were denied in situations where the result was to leave the employees without any union representation.

The Board disposed of another 50 certification applications under Section 39(2) in respect of employees already represented by another union. This number represented almost 7% of the total certification decisions in 1981. Thirty-five applications involved presently certified bargaining units and were contested. The remaining 15 represent those applications which were either uncontested or made in an attempt to fragment or enlarge an existing unit. Of the 50 applications, 45 were made during the term of an existing collective agreement. The applicant union was successful in obtaining certification in 21 of the 50 cases. In 5 cases, the application for certification was dismissed but an existing certification of the applicant union was varied to include the employees. The incumbent union retained its certification in the remaining 24 cases.

Since the subject of certification applications under Section 39(2) (or "raids" as they are commonly termed) has continued to generate considerable discussion in the labour relations community in British Columbia, it may be useful to present the pertinent data regarding the number of employees involved in such cases. In 1981, applications under Section 39(1) involved 8217 employees, of whom 7095 obtained union representation. By contrast, inter-union contests under Section 39(2) involved 4427 employees, with a resulting change in union representation for 1852 of these employees. (See

Table 8.) A review of the Board's files indicates that, of the total 35 cases and 4427 employees, four inter-union rivalries resulted in more than one application and affected 2893 employees (65%). Inter-union contests between the Hospital Employees' Union and the International Union of Operating Engineers produced seven applications involving 195 employees (4% of the total); between the Canadian Association of Industrial, Mechanical and Allied Workers and the United Steelworkers of America, five applications involving 1394 employees (32% of the total); between the B.C. Fruit & Vegetable Workers' Union and the Teamsters, four applications involving 1160 employees (with some overlapping) (26% of the total); between the Canadian Union of Public Employees and the Hospital Employees' Union, two applications involving 144 employees (3% of the total). The balance of the contests affected a wide variety of unions.

In 1981, the number of employees receiving certification was 8962, a decrease from the 9108 employees receiving certification in 1980. The number of employees involved in a contested change of union representation increased from 494 in 1980 to 1852 in 1981, an increase of 275%.

B. Representation Votes

In 1976, the Labour Relations Board set down in a formal judgment* its guidelines and policy regarding the conduct of representation votes. The Board policy described there remains the same, notwithstanding the subsequent amendments in respect of union membership requirements.

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* Plateau Mills Ltd. and the International Woodworkers of America, Local 1-424, BCLRB No. 87/76, [1977] 1 Can LRBR 82.

Section 45* of the Code contains the criteria which govern the Board's disposition of certification applications.

Section 45(1) contains two alternative standards: either the applicant union must have more than 55% membership support at the time of application, or a majority of the employees in the proposed unit must express their wish to be supported by the union through a representation vote. If the Board finds through its investigation that the union has as members between 45% and 55% of the employees, then Section 43(2) directs that a vote shall be taken among the employees in the unit. Section 45(3) specifies that, for purposes of certification applications, the majority judgment in a representation vote is based on the number of employees who cast ballots. However, the 1977 amendments added a proviso to that basic tenet (see Section 45(4)).

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* s.45. (1) Where the board is satisfied that on the date it receives the application for certification more than 55% of the employees in the unit are members in good standing of the trade union, or a majority wish to be represented by the trade union, and that the unit is appropriate for collective bargaining, the board shall certify the trade union as bargaining agent for the unit.

(2) In deciding whether a person is a member in good standing of a trade union, the board may decide the question without regard to the constitution and bylaws of the trade union.

(3) For the purposes of subsection (1), where a representation vote is taken, a majority shall be determined as the majority of the employees in the unit who cast ballots and who vote to elect the trade union as bargaining agent for the unit.

(4) Notwithstanding subsection (3), where

(a) a representation vote is taken; and

(b) less than 55% of eligible employees cast ballots,

the board may direct that another representation vote be taken, and in that event subsection (3) applies.

If a union seeks certification without the holding of a representation vote, the Board must be satisfied that, on the date it receives the application, more than 55% of the unit employees were members in good standing. If the Board is thus satisfied, Section 45(1) of the Code requires the Board, if it is also satisfied that the unit is appropriate for collective bargaining, to certify the applicant trade-union. Nevertheless, even in the situation where the trade-union has more than 55% of the employees as members, it has been argued that the Board should order a vote as a matter of course upon the request of an employer or a petition of the employees. Section 43(1)* enables the Board, in any case, to conduct a representation vote to determine the employees' wishes. However, reading that subsection together with Section 45(1), the Board has concluded that it is not the policy of the Code to require a vote as a pre-condition for certification of a previously unorganized unit of employees. As the Board explained in Plateau Mills, the Code assumes that when a majority (now more than 55%) of employees have signed union membership cards, it constitutes a valid expression of their wish that the trade-union represent them. Once more than 55% of the employees have made their initial choice in favour of the applicant union, the Code confers exclusive bargaining authority on the union (Section 46) and gives it at least ten months within which to exercise that authority (Section 52).

These are the reasons for the general rule that a representation vote is not a necessary standard vehicle for obtaining certification. In Plateau Mills, however, the Labour

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* s.43. (1) The board, to determine whether the employees in an appropriate bargaining unit wish to have a particular trade union represent them as their bargaining agent, may order that a representation vote be taken, in accordance with the regulations, among the employees of the unit.

Relations Board did outline some special cases where it orders representation votes under Section 43: for example, if there is concern about fraud or coercion in the manner in which employees were signed up as members; or if the unit has been substantially enlarged between the date of the application for certification and the date of certification itself.

There are instances other than a single application from a trade-union for certification of previously unorganized employees where the Board would use representation votes. In a number of applications, two unions may satisfy the majority membership requirements under Section 45, in which case the Board cannot certify one union under Section 45 on this basis alone. Except in the most unusual circumstances, the Board will order a vote in such a case between the two competing unions. Ten months or more after certification, the Board may use a vote of the employees in the bargaining unit to determine whether the trade-union has ceased to represent a majority of the employees (Section 52(2)). Under Section 53(2), a vote may be ordered when a trade-union applies for succession rights and obligations on the sale or transfer of the business of the certified employer. Before the Board declares that there has been a merger, amalgamation or transfer of jurisdiction among trade-unions, it may order a vote of the affected employees. (See Section 54(2).) Section 40(3) of the Code makes it mandatory for the Board to conduct a representation vote when it has before it an application for a multi-employer certification. Votes are used to determine consent to trade-union representation of dependent contractors (Section 48(1)) and professional employees (Section 153). If a trade-union so requests, a representation vote may be taken prior to determination of the appropriate bargaining unit on a certification application (Section 44(1)). Finally, within the framework of

a Section 57 enquiry, a representation vote may be conducted. (For statistics on the Labour Relations Board's use of the representation votes described here, see Statistical Appendix page 63, and Table 9.)

C. Unfair Labour Practices and Remedies

Section 2 of the Labour Code states that "every employee is free to be a member of a trade union and to participate in its lawful activities". The scope of this freedom is defined and protected by a network of legal restrictions on the conduct of either employers or trade unions which may infringe upon the exercise of such freedom.

Section 5 prohibits coercion or intimidation of any kind which might compel or induce a person to be or not to be a union member. Section 3 contains a series of specific directives to employers which are of special importance in a union organizing campaign. The employer may not interfere in the formation of the union or favour one union over another; it may not refuse to hire because of union membership or manipulate working conditions to discourage unionization; it may not threaten loss of jobs or plant shutdown in the event of certification. Of prime importance is the legislation governing the discharge of an employee for union membership or activities. Recognizing the serious impact this can have on employees and the difficulty the union has in establishing the employer's motivation, the Code places on the employer the onus to establish affirmatively that such a discharge did not stem from an improper anti-union purpose. (See Section 8(6).)

The employer's right to run its business efficiently and without the interference of a union organizing campaign during working hours is protected by Section 4. Once a trade-union is certified, Section 6 requires both the employer and the union to bargain in good faith and make every reasonable effort to conclude a collective agreement. Since certification gives the union the exclusive legal authority to bargain on behalf of all employees, Section 7 prohibits the union from acting in a manner which is arbitrary, discriminatory, or in bad faith, in the representation of any of these employees.

What are the steps which the Board can take under Section 8(4) of the Code when it finds that a violation of the law has occurred? The basic remedy under the statute is a cease and desist order under Section 8(4)(a) against illegal conduct by a trade-union, an employer, or any other person. This power of the Board is supported by further remedies specifically tailored to certain problems. The one most often used in practice, because of the large number of discharge cases handled, is the Board's power under Section 8(4)(c) to order reinstatement and/or back pay for an employee discharged or otherwise disciplined contrary to Section 3(3)(a). Also useful is the remedy contained in Section 8(4)(d) of the Code under which the Board may forestall, for as long as sixty days, any employer attempts to influence employee freedom of choice by altering wages or other working conditions. A remedy of considerable value (and some controversy) is Section 8(4)(e) which gives the Board discretion to certify or to refuse to certify an applicant trade-union in circumstances where an unfair labour practice has made it difficult to determine the true wishes of the employees.

In 1981, the Board received 292 complaints of violations of these several provisions of the statute, 21% greater than the number received in 1980. The Board disposed of 283 complaints; 198 were settled without adjudication, usually through the assistance of an Officer of the Board. Of the remaining 85 complaints formally decided by the Board, 60 were rejected and 25 resulted in findings of unfair labour practices. Hearings were held for 96 applications and 20 of the 85 Board decisions were accompanied by written reasons in a formal Board decision.

Section 3

The source of the largest number of unfair labour practice charges is some type of employer activity designed to discourage employees from unionization. Of the 283 unfair labour practice cases disposed of by the Board in 1981, 156 alleged violations of Section 3 of the Code. Of these 156 complaints, 99 alleged dismissals contrary to Section 3(3)(a), while another 57 complained of employer tactics short of actual discharge. Of these 57 complaints, 49 involved allegations of improper attempts to induce or compel abstention from union membership, four were based on alleged interference with trade union administration, two alleged the use of professional strike breakers and two alleged refusal to agree to a collective agreement clause requiring employees in a unit to pay union dues.

The most numerous and significant unfair labour practice complaint is that concerning discharge for union involvement, alleged in 99 of the 283 complaints. Almost all of these 99 complaints were brought by trade unions; on'y one case was

filed by the individual affected. Settlements were reached with the assistance of the Board or one of its Officers in 79 cases. Twenty discharge cases required adjudication by the Board.

Thirty of the 99 dismissal complaints were withdrawn by the unions involved and Board records do not indicate the fate of the dismissed employees. Of the remaining 69 dismissal complaints, including settlements and decisions, 58 culminated in some form of positive relief for at least some of the employees affected.

The Board's power under Section 8(4)(c) to order reinstatement and/or back pay was the basis of twelve Board decisions involving twenty-seven employees. Twenty-five of these employees were reinstated with back pay and two received compensation, one without reinstatement and one with reinstatement in the next available position.

Thirty-four complaints requested certification under Section 8(4)(e) in conjunction with a complaint under Section 3. Two of these requests were granted. We note that in 16 of the cases the union did secure certification under Section 45 of the Labour Code.

Section 4

Six complaints were filed by employers alleging that unions had been organizing on the employers' properties during working hours. Three of these cases were settled and three were dismissed.

Section 5

In 1981, the Board dealt with 13 complaints under Section 5 of the Labour Code. In five of these complaints, one union alleged a rival union had improperly tried to influence employees in their choice of union representation. Three of these complaints were dismissed, the other two, settled.

Three complaints were filed by an employer against a union. One case was settled, one dismissed and in the third case, a violation was deemed to have occurred. Three complaints were filed by a union against an employer. Two were settled, one dismissed. One complaint by employees against a union was dismissed. One complaint was filed by an employer against another employer alleging a refusal to renew a contract because employees were members of a union. This complaint was settled by the Board.

Section 6

There were 24 complaints disposed of alleging a refusal to bargain in good faith as required by Section 6 of the Code. Twenty of these were filed by unions, two, by employers, and two by employer organizations.

Of the 24 charges of failure to bargain in good faith, 17 were voluntarily resolved. Three of these complaints were rejected by the Board. In three cases a violation was deemed to have occurred and in one case, an opinion was issued that a certain action would be considered bargaining in bad faith.

Section 7

In 1981, there were 84 complaints by individual employees alleging a violation by their union bargaining agent of the duty of fair representation contained in Section 7 of the Code. Fifty-three of these complaints were voluntarily resolved through the efforts of an Officer or a member of the Board. Twenty-eight complaints were rejected by the Board. In three cases, orders were issued, in one case ordering the union to proceed under the grievance procedure in the collective agreement and, in two cases, to compensate the complainant for wages lost.

Section 70

Although not located in the unfair labour practice part of the Code, the contoversial power of "first contract arbitration" conferred on the Board by Section 70 may usefully be reviewed here. As a practical matter, this power is designed as a remedy for those cases where there were difficulties between the parties at the representation stage and they have not been able to engage in serious, good faith bargaining following certification.

Following referral of the dispute by the Minister of Labour, the Board has the power to settle the terms of the collective agreement for a period of one year. The Board has imposed 12 contracts since Section 70 was introduced. However, it should be noted that the Board does not automatically impose a first collective agreement on the parties, even where a persuasive application is made. Instead, it makes a determined

effort to secure a voluntary settlement of the agreement. The objective of Section 70 is to foster an enduring collective bargaining relationship. In the Board's view, a solution agreed to by both parties is a much better foundation for such a relationship than an order imposed by the Board.

In 1981, there were two applications under Section 70 referred to the Board by the Minister. Neither had been disposed of by the Board by the end of 1981.

D. Applying the Code to the Bargaining Relationship

Once the issue of union representation is disposed of, the Board is required to apply the provisions of the Labour Code to a large number of issues which may arise in a collective bargaining relationship. Some of these revolve around the original certification. For example, Section 51* of the Code requires the consent of the Board to changes in working conditions while a certification application is pending. Section 61 imposes the same requirement for four months following certification and notice to bargain. The Board's policy under these Sections is to enquire from the trade union whether it objects to the proposed alteration. Ordinarily, the union does not object and the application is granted. In those cases where the union does object with reasons, the Board usually withholds permission. This report year saw 45 applications

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* s.51. (1) Where an application for certification is pending, a trade union or person affected by the application shall not declare or engage in a strike, an employer shall not declare a lockout, and an employer shall not increase or decrease rates of pay, or alter a term or condition of employment of the employees affected by the application, without the board's written permission.

(2) This section shall not be construed as affecting the right of an employer to suspend, transfer, lay off, discharge or discipline an employee for proper cause.

disposed of under these Sections. Of the 45 applications, 12 were withdrawn, 25 were granted and eight were rejected

Another question which may arise during a certification application is whether certain individuals are "employees" under the Code and, if so, whether they are properly included in a bargaining unit. The policy of the Board is not to proceed with such questions until after the certification is completed, except in those rare cases where the status of certain individuals in question may affect one way or the other the majority status of the union. Following certification, either the trade-union or the employer may apply to the Board under Section 34 for a determination of the position of the person under the Code and the bargaining unit. Such questions also arise during the course of the collective bargaining relationship when new persons are hired or job functions changed. In 1981, there were 261 new applications filed under Section 34, almost all directed to this issue, and a total of 292 applications were disposed of by the Board. The practice of the Board is to have an Industrial Relations Officer investigate the factual nature of the individual's position and make a report.

Once collective bargaining has been established, material changes in circumstances can require a decision of the Board adjusting the certification to the new situation. Most of these take the form of an application to the Board under Section 36 for a variance of a certification or accreditation. A number of cases involve applications under Sections 53 and 54, the successorship provisions of the Code, and under Section 37, the "common employer" provision.

In 1981, the Board received 713 applications for certification variance, an increase of 60% from the 1980 figure. Most of these applications involve a simple change in the name or address of the employer or the trade-union and are simply processed. In a few cases, however, the requested variance would have the effect of increasing or decreasing the number of employees in the existing bargaining unit, and these are often contested. The policy of the Board in these cases is to exercise its discretion under Section 36 in accordance with the principles established by the Code for certification or decertification proceedings, and particularly to investigate the wishes of the group of employees concerned.

Quite frequently, there is a fundamental change in the identity of a party to the certification. Many of these occur as a result of the sale of its business by the employer. Section 53(1) provides for the automatic transfer of the certification and the collective agreement in such cases. In cases where the application of Section 53* is questionable,

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* s.53. (1) Where a business or part of it or a substantial part of its entire assets are sold, leased, transferred or otherwise disposed of, the purchaser, lessee or transferee is bound by all proceedings under this Act before the date of the disposition, and the proceedings shall continue as if no change had occurred; and where a collective agreement is in force, it continues to bind the purchaser, lessee or transferee to the same extent as if it had been signed by him.

(2) Where a question arises under this section, the board, on application by any person, shall determine what rights, privileges and duties have been acquired or are retained, and for this purpose the board may make inquiries or direct that representation votes be taken as it considers necessary or advisable.

(3) The board, having made an inquiry or directed a vote pursuant to this section, may

(a) determine whether the employees constitute one or more units appropriate for collective bargaining;

(b) determine which trade union shall be bargaining agent for the employees in each unit;

particularly where there may be an overlapping of bargaining rights, the parties may apply to the Board under Section 53(2) for a clarification of the issues. Section 53(3) gives the Board greater flexibility in such cases. The Board received 421 applications under Sections 53 and 54 (which deals with one union applying to succeed another) during 1981, an increase from the 199 received in 1980.

Less often, a change in the identity of an employer results from the fact that a single management group operates through two or more legally distinct business enterprises, usually companies or partnerships. When such corporate interrelationships threaten existing or impending rights or obligations under the Code, the Board may act under Section 37* to treat all of the enterprises as one employer for the purposes of the Code.

S. 53.(3) Cont'd.

(c) amend, to the extent it considers necessary or advisable, a certificate issued to a trade union or the description of a unit contained in a collective agreement;

(d) modify or restrict the operation or effect of a provision of a collective agreement in order to define the seniority rights under it of employees affected by the sale, lease, transfer or other disposition; and

(e) give directions the board considers necessary or advisable, as to the interpretation and application of a collective agreement affecting the employees in a unit determined under this section to be appropriate for collective bargaining

* s.37. Where, in the board's opinion, associated or related activities or businesses are carried on by or through more than one corporation, individual, firm, syndicate or association, or a combination of them, under common control or direction, the board may treat them as constituting one employer for the purposes of this Act.

In 1981, the Board disposed of 51 applications under this Section, 23 of them involving enterprises in the construction industry. Twenty-eight applications were settled or withdrawn. This was in part due to the procedures developed by the Board to expedite the applications arising in the construction industry and to promote the voluntary settlement of these cases. Of the remaining 23, the Board granted 12 with respect to at least some of the enterprises named in the application. The balance were rejected.

E. Administration of the Collective Agreement

Under Part 6 of the Labour Code, the preferred vehicle for resolution of disputes under a collective agreement is grievance arbitration. But under the statute, the Board does have a significant role to play in the administration of the collective agreement. In this part of the report, we deal with two major areas of Board involvement in this process.

Section 96

Section 96(1)* gives the Board a comprehensive original jurisdiction in resolving grievances arising under the provi-

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* s.96. (1) Notwithstanding the provision required or prescribed under section 93 or 94,

(a) if at any time prior to the appointment of an arbitration board or other body, either party to the collective agreement requests the board in writing to appoint an officer to confer with the parties to assist them to settle the differ-

sions of a collective agreement. This procedure has been used consistently both by trade-unions and employers since it was first introduced into British Columbia law in 1963 in the form

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S.96(1) Cont'd.

ence, and the request is accompanied by a statement of the difference to be settled, the board may

(i) appoint that officer; or

(ii) proceed as provided in paragraph (c);

(b) where an officer is appointed under paragraph (a), the officer shall, after conferring with the parties, report to the board;

(c) where the board decides, under paragraph (a)(ii) to proceed under this paragraph, or the officer's report is made under paragraph (b), the board may, if it believes the difference, when referred to the board, is arbitrable,

(i) refer the difference back to the parties; or

(ii) inquire into the difference, and after the inquiry it considers adequate, make an order for final and conclusive settlement of the difference;

(d) where the board refers the difference back to the parties under paragraph (c)(i), the parties shall follow the procedure in the provision required or prescribed under section 93 for final and conclusive settlement of the difference;

(e) where the board

(i) inquires into the difference under paragraph (c)(ii); or

(ii) advises the parties that in its opinion the difference is not arbitrable,

neither the Arbitration Act nor any other procedure for settlement of the difference applies; and

(f) where the board inquires into the difference under paragraph (c)(ii), it may exercise all the powers of an arbitration board under this Part, and its order for final and conclusive settlement of the difference is final and binding on the parties and on all other persons bound by the collective agreement, and all those parties and persons shall comply with the order.

of Section 22(4) of the old Labour Relations Act.* In this report year, the number of applications filed with the Board increased slightly, from 552 in 1980 to 578 in 1981.

Under Section 96(1), a party to a collective agreement may request the Board to appoint an Officer to assist in the settlement of a difference arising during the term of a collective agreement. The Board is not required to appoint an Officer simply because a party to an agreement has made such a request. But its practice has been to make an appointment if the difference between the parties appears to be arbitrable under the agreement and if all the steps in the grievance procedure prior to arbitration have been exhausted. This is because the Board considers that the primary purpose of Section 96 is to offer the parties help and advice in resolving their differences without the expense and delay of an arbitration hearing.

In the first six report years, officer mediation under Section 96 of the differences arising under a collective agreement achieved a settlement of approximately two-thirds of the applications made to the Board. In 1980, the proportion settled was 70% of the total applications disposed of and in 1981, this proportion decreased slightly to 68%.

The Board disposed of 495 applications under Section 96(1) in the report year. Of these, a total of 339 were voluntarily settled, almost all through the efforts of an Officer. This

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* It should be noted that the availability of Section 96(1) as an alternative to arbitration is not mandated by law. Section 96(2) of the Code allows the parties, by specific agreement, to exclude the Board from any role in resolving grievances under their collective agreement.

very substantial rate of officer settlement is of major benefit to the labour relations community in British Columbia in two respects: the parties reach a voluntary accommodation of their differences under their own contract rather than having a binding decision imposed by an outside legal authority; in the process, a potentially serious over-loading of the arbitration procedure is avoided.

If the Officer appointed by the Board does not achieve a voluntary settlement of an arbitrable difference, the Board may either refer the difference back to the parties or inquire into the difference itself and make an order for final and conclusive settlement of the difference. In exercising its discretion about how it is to proceed in respect of unsettled Section 96 applications, the Board takes account of such factors as the nature and significance of the particular grievance, the character of the bargaining relationship between the parties, and the relative capability of Board procedure in achieving a satisfactory disposition of the dispute.

In a considerable number of cases, the Board exercises its powers under Section 96(1)(c)(ii) to make a binding decision on the basis of the Officer's report and submissions from the parties. Generally speaking, these involve minor grievances which the Board anticipates would not go to arbitration or which would place a disproportionate burden on a party required to go to arbitration for a decision. The parties require an authoritative judgment on the merits of their case and a reasonable appraisal of these merits can be made on the basis of investigation and written submissions. Typical examples of such grievances are trade-union claims against an insolvent employer for unpaid wages or fringe benefits, or for failure to deduct and remit union dues; differences about minor discipline;

and disputes as to the proper interpretation of specific contract language. The Board was able to dispose of 35 applications under Section 96(1) by administrative decision in the report year.

Each year, there is a sizable number of grievances which an Officer is not able to settle under Section 96 and where his report indicates that the matter is of considerable significance to the parties under the collective agreement and thus should receive the full consideration of an oral hearing. The Board's normal practice under Section 96(1)(c) is to refer these matters back to the parties for an arbitration hearing. This policy embodies the statutory principle that adjudication of key disputes under the agreement should be conducted in an environment which is under the control of the same parties who have negotiated the agreement. As well, the policy reflects the need for the proper allocation of the Board's own scarce hearing time amongst the five thousand or more cases which come before it each year. This policy is applied in such typical cases as these: unresolved disputes about the discharge of an employee where the facts are in dispute; unresolved seniority grievances in connection with a layoff or promotion where the relative qualifications of the affected employees are at issue; cases involving major issues of contract interpretation which may be of significant value as a future precedent and require reference to extrinsic evidence and argument about the relevant arbitral jurisprudence; situations where the parties have developed their own specialized dispute resolution procedures, such as jurisdictional disputes in the construction industry, or specialized job evaluation programs. In 1981, the Board referred 97 such cases back to the parties for arbitration under their collective agreement.

There is one important exception to the Board's policy that grievances which require a formal hearing should be held under the arbitration procedure established under the collective agreement. Where the difference between the parties raises an issue of general importance within the statutory responsibilities of the Board, the matter will normally be set down for a hearing in front of a Panel of the Board which will then proceed to adjudicate the grievance and prepare formal reasons for its decision. The following are examples of cases in which the Board has exercised its discretion under Section 96(1)(c) to adjudicate the grievance itself: grievances about an issue, for example, a discharge or work assignment, which has led to a wildcat strike or other form of industrial unrest; grievances which are tied to unfair labour practices, for example, the alleged discharge of an employee because of union activities or the alleged breach by a union of its duty of fair representation to the grievor; grievances in which the primary issue in dispute is the proper application of key statutory concepts, for example, "employee", "dependent contractor", "collective agreement"; grievances involving major issues of law and policy relating to the collective agreement and its proper interpretation, for example, the proper scope of disciplinary demotion. In 1981, formal hearings by the Board resulted in the issuance of 15 orders under Section 96(1)(c)(ii).

In summary, the Board disposed of 495 applications under Section 96(1) in the report year. Of these, a total of 339 were voluntarily settled, almost all through the efforts of an Officer but, on a number of occasions, through the intervention of a Panel of the Board. Seven of the applications were withdrawn, two were determined to be non-arbitrable and 97 were referred back to the parties. The remaining 50 were adjudicated by the Board. Thirty-five of the latter turned on issues which would be disposed of on the basis of the Officer's

report and written submissions from the parties.

Tables 10 to 12 state in detail the results in applications brought under Section 96. Table 10 sets out the nature of the disposition and indicates which party was the beneficiary. Table 11 gives a breakdown of the cases by reference to the type of problem in dispute. Table 12 gives the industrial composition of the cases and the number of applications brought by unions and employers in each industry.

Over the last seven report years, the relative proportions in the origin of applications under Section 96(1) has fluctuated only slightly with 91% to 96% of the applications coming from unions and 4% to 9% coming from employers. In 1981, 461 of the 495 applications disposed of came from unions (93%) and 31 (6%) came from employers. Two applications were filed jointly by an employer and a union and one was filed by an accredited employers' association.

An analysis of the 578 applications received by the Board in 1981 (see Table 16, column 4) reveals that five unions filed over 30 applications. The United Steelworkers of America filed 96 applications (17% of the total); the Hotel and Restaurant Employees' and Bartenders' Union filed 83 applications (14% of the total); the United Brotherhood of Carpenters and Joiners of America filed 44 applications (8% of the total); the Canadian Union of Public Employees filed 38 applications (7% of the total) and the Pulp, Paper and Woodworkers of Canada filed 38 applications (7% of the total). While these are large unions, it is observed that each union has a considerable number of relatively small bargaining units, each with its own (and often unique) collective agreement.

Of the 316 employers who were respondents to union complaints disposed of by the Board in 1981,(see Table 12), a total of 291 employers (or 92%) responded to either one or two complaints. Indeed, in only one case was an employer the respondent to more than ten applications. Turning to the 31 cases disposed of in 1981 in which the employer filed the application, there is the same wide distribution amongst the parties involved. Only one of the 16 employers who filed Section 96(1) applications brought more than 3 applications.

The Board continues to conclude, on the basis of these findings of the wide distribution in the use of Section 96(1) either by unions, employers, or industry, that there is no specific abuse of the procedure.

In early 1976, the Board issued its first official policy statement under Section 27* of the Code. That statement** examines the powers of the Board under Section 96 and attempts to formulate general guidelines for the exercise of the Board's discretion. In addition, the policy statement sets out in detail the Board's views of the purpose of the Section 96 procedure and how, within the larger framework of the Code, the use of that procedure may promote the constructive settlement of grievances and thus secure and maintain industrial peace during the term of the collective agreement.

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* s.27. (2) The board may formulate general guidelines to further the operation of this Act; but the board is not bound by those guidelines in the exercise of its powers or the performance of its duties.

(3) In formulating general guidelines the board may request that submissions be made to it by any person.

(4) The board shall make available in writing for publication all general guidelines formulated under this section, and their amendments and revisions.

** BCLRB No. 12/76, [1976] 2 Can LRBR 17.

Section 108

The Board has another major role to play in the administration of the collective agreement under Part 6 of the Labour Code. Section 108 of the Code, enacted in mid-1975, gives the Board authority to review arbitration awards delivered under collective agreements. The Board has issued a number of major decisions outlining the view that it takes of Part 6 of the Labour Code as a whole in terms of the scope of the Board's supervision of arbitrators contemplated by the Code.

In its first major decision under this provision, Simon Fraser University, BCLRB No. 16/76, [1976] 2 Can LRBR 54, the Board indicated clearly that Section 108 does not afford the losing party in an arbitration proceeding a full-blown right of appeal to the Board on the merits of the arbitrator's decision. The Board carefully limits its enquiry to whether the party has been denied a "fair hearing" (as found, for example, in Board of School Trustees of School District No. 68 (Nanaimo), BCLRB No. 68/76, [1977] 1 Can LRBR 39) or whether the award is inconsistent with the principles expressed or implied in the Code or any other legislation dealing with labour relations (as found, for example, in University of British Columbia, BCLRB No. 42/76, [1977] 1 Can LRBR 13). Within those standards formulated in Section 108, the Board will not overturn an arbitration award on the basis of alleged mistakes in findings of fact or interpretation of contract terms.

In the report year, the Board received 51 applications under Section 108 and disposed of 49 such applications. Of the 49, a total of 24 were brought by employers, 23 by unions, and two by the grievors involved. Seventeen dealt with arbitration awards regarding discharge grievances. Of the 49 disposed

of by the Board in 1981, six were withdrawn and 37 were dismissed.

The element of limited interference in grievance arbitration was reflected in the fact that in only six applications was the decision of the arbitrator set aside. In five cases, the grievances were referred back to the arbitrator; in one case the Board ordered the arbitrator not to publish a supplementary award.

Of the 43 applications decided by the Board, nine were reviewed in a formal hearing and seven were accompanied by reasons in a formal Board decision.

F. Strikes, Lockouts and Picketing

The Board, charged with the primary responsibility for administering the law relating to strikes, lockouts and picketing in British Columbia, received 573 complaints and applications under Part 5 of the Labour Code in 1981 and disposed of 567 in the report year. The 567 cases dealt with by theBoard included 196 concerning alleged illegal strike action, six concerning alleged illegal lockouts and 365 concerning only some form of picketing activity.

In exercising its jurisdiction in this regard, the Board balances attempts at speedy decision-making and its effort to deal effectively with the underlying factors which have produced the illegal work stoppage or picketing. Officers of the Ministry of Labour as well as the Board's own staff and members are used by the Board in an attempt to achieve a satisfactory

and mutually acceptable disposition of each dispute without the need for a formal hearing or adjudication. In 1981, this procedure led to a settlement of 368 complaints (65%, somewhat lower than the 72% in 1980), including 135 of the 196 strike complaints, five of the six lockout complaints and 228 of the 365 applications and complaints in the picketing area. Sixty-seven of these complaints reached a formal hearing before an accommodation could be reached by the parties.

Where such voluntary disposition of a complaint is not achieved, a Panel is convened, evidence and argument is heard and a formal decision is made. In 1981, 199 complaints led to formal adjudication by the Board, 137 resulted in Board orders and 62 were dismissed.

Strikes and Lockouts

A fundamental principle of the Labour Code is that the legality of a strike depends upon its timing. The use of this economic weapon is prohibited through much of the life of the collective bargaining relationship. In particular, Section 93 requires that all disputes arising under a collective agreement are to be resolved without stoppage of work, either by arbitration or other techniques devised by the parties. Section 79(1) complements that requirement by prohibiting strikes during the life of a collective agreement. During the 1981 report year, the Board disposed of 196 applications in this area. One hundred and thirty-five of these were settled and the Board adjudicated the remaining 61.

Of these 61 applications, 48 alleged threatened or actual illegal job action during the term of a collective agreement, contrary to Section 79(1). In two of these cases, the Board was asked to rule on whether or not a collective agreement was in effect.

In 40 of the 48 cases, work stoppages, work slowdowns or refusals to perform specific duties were generated by real or felt grievances on the part of the employees concerning the manner in which the contract was being administered or by clauses in the contract allegedly allowing such job action. In 38 of the 40 cases, the Board ruled a violation had occurred. In 30 of the 38 cases, an order was issued, three of these accompanied by conditions designed to achieve a resolution of the underlying grievance and three were issued with the consent of both parties. In the other eight cases, the Board indicated it would issue an order upon a request from the complainant. The Board rejected the applications in two of the 40 cases because the job action did not constitute a strike under the Labour Code.

Regarding the remaining eight of the 48 cases, in three cases the Board declared an agreement void under Section 90 of the Code; in four cases, the Board refused to issue such a declaration regarding an alleged unfair edict (in one case, because relief was granted under Section 5 of the Labour Code); in one case, the Board ruled a collective agreement was not in effect and thus rejected the application.

Even when no collective agreement is in force, the legality of a strike is subject to certain preconditions under the Code. The parties must have bargained collectively, in good faith, with respect to the dispute and must have failed to conclude

a collective agreement. The trade union must conduct a strike vote among the employees in the unit affected and must give 72 hours written notice (or such longer period as may be directed by the Board under Section 81(4) of the Code) to the employer that a strike is to occur. If a mediation officer has been appointed in the dispute, the strike must be postponed until the officer has reported to the Minister and the union has been so advised. Only after each of these conditions has been satisfied does a strike become timely and legal. Ten of the 61 strike applications adjudicated by the Board in 1981 alleged a violation of one or another of these requirements. The Board ruled a violation had occurred in eight of these cases and dismissed two of them.

The remaining three (of the 61) cases, requested relief under Section 90 of the Code from certain unfair declarations issued during the course of a legal strike. In two cases, relief was granted; in the third case it was not.

The provisions of the Code with respect to the legality of employer lockouts mirror those which define the legality of employee strikes. During the 1981 report year, the Board disposed of six complaints alleging illegal lockouts. Five of the six were settled without formal Board adjudication. The remaining complaint was dismissed.

Picketing

When parties to a collective bargaining relationship reach an impasse in negotiating the terms of their collective agreement, either side may, subject to the legal restrictions already noted, use the economic sanction of a work stoppage to enforce

its demands. The employer is legally entitled to attempt to continue operations by replacing the strikers so long as he does not use professional strike breakers. The union, on the other hand, is entitled to attempt to stop the employer's efforts to maintain his operations. The primary measure recognized by the law for that purpose is peaceful picketing within the limits permitted by the Labour Code. In the 1981 report year, the Board disposed of 365 applications pertaining to picketing. Two hundred and twenty-eight of these were settled and the Board adjudicated the remaining 137.

Picketing is legal only when it is carried on in connection with a lockout or a lawful strike. Therefore, picketing designed to force an employer to recognize the picketing union is prohibited by the Code. Of the 137 complaints adjudicated by the Board concerning picketing, one alleged that the picketing was organizational in purpose and therefore outside the scope of permitted picketing under the Code. In this case, the Board found that the picketing should be prohibited.

Another principle of the Code is that the legitimate target of picketing is the struck employer and not an uninvolved third party. The one apparent exception in the Code, the "ally doctrine" actually seems to prove the rule. By involving itself in a bargaining dispute on the side of the struck employer against the striking union members, the ally forfeits its neutral status and exposes itself to the same kind of peaceful picketing and economic pressure as the struck employer. Twenty-three complaints and applications adjudicated in 1981 dealt with picketing directed at secondary employers which the striking unions alleged had allied themselves with struck employers. In 21 of the 23 cases, the picketing was found to be illegal. In 14 of the 21 cases, a cease and desist order was issued (two with conditions), in the other seven, the Board

agreed to provide one on request. In the other two cases, the Board refused to prohibit the picketing.

Where several employers share a common site of operations, a picket line directed at one of these employers is not a discriminating instrument likely to affect only its intended target. Accordingly, the Code confers on the Board a broad discretion to give precise directions confining the impact of picketing to the struck employer and insulating third party employers from its damage. The Board disposed of 66 such applications by secondary employers in 1981 by restricting the scope of the picketing in 38 cases, and refusing to exercise its discretion in the remaining 28 cases.

In addition to the above cases, the Board dealt with 40 cases involving pickets at actual or alleged secondary locations of a struck employer. In 22 of the 40 cases, the Board granted relief or deemed the picketing unlawful. In the remaining 18 cases, the picketing was held to be lawful and was not restricted.

Of the remaining seven of the 137 cases, three alleged picketing prior to the date such action could legally begin. In all three cases, the Board ruled the picketing was unlawful. Another three were the responses of individual(s) to grievances. In one case, the picketing was deemed unlawful. In the other two cases, the Board declined to rule. The seventh case asked for partial relief from picketing during a legal lockout. This application was rejected.

VII. STATISTICAL APPENDIX

A. Introduction

The following tables provide an analysis of the applications filed with and disposed of by the Labour Relations Board in 1980 and 1981.

In a few cases, multiple decisions resulted from one application. These were usually counted as single decisions. However, for two types of applications, where the volume of multiple decisions was higher, different methods were used. Board rulings regarding the status of employees under Section 34 were counted individually -- that is, one application requesting ten rulings was counted as ten decisions, while a withdrawal of an application was counted as one. Applications to vary accreditations requested varying numbers and types of decisions. Each application was counted as one decision but a footnote indicates the number of employers who were affected by these applications.

An application involving a dispute is classified as withdrawn if the request for withdrawal comes prior to the involvement of an Officer or a Board panel. An application withdrawn following such involvement is classified as settled.

It is important to note when using these figures as a guide that the work content of individual applications varies widely, both among different categories of applications and among applications in the same category. The work content of the administrative, investigative and decision-making functions can vary widely as well, from category to category and from application to application.

B. 1980-81 Comparisons

Applications Filed

In 1981, 6004 applications were filed with the B.C. Labour Relations Board, an increase of 36% from applications filed in 1980.

In 1981, the Board experienced an increase from 1980, in 13 of the 18 categories shown in Table 1. Increases greater than 50% from the previous year occurred in the following categories.

Applications to treat several entities as one employer increased by 132%. Applications for a successor status declaration increased by 112% due mainly to the variance of 156 certifications for the same union under Section 54. As in 1980, in 1981 there was a significant increase (107%) in the Miscellaneous category reflecting a full year's experience with applications relating to the functions of the Public Service Adjudication Board, 722 such applications being filed. Applications regarding alleged illegal strikes, lockouts and picketing increased by 88% from the report year 1980. Applications to vary certifications increased by 60% due mainly to three unions requesting a change in the union name on all of their certifications. Applications to vary accreditations increased by 58%.

Applications filed decreased from 1980 in only three categories, applications for accreditation, for decertification and for an interpretation of the Labour Code as it applies to the collective bargaining relationship. Two categories remained unchanged.

Applications Disposed Of

In 1981, 5560 applications were disposed of by the B.C. Labour Relations Board, an increase of 26% from 1980.

In 1981, the Board experienced an increase from 1980 in 11 of the 18 categories shown in Table 2. Increases greater than 50% from the previous year occurred in the following categories.

Again, the Miscellaneous category increased significantly (100%) reflecting a full year's experience with the functions of the former Public Service Adjudication Board. Applications for a successor status declaration increased by 83%. Applications regarding alleged illegal strikes, lockouts and picketing increased by 82% from the report year 1980. Applications to treat several entities as one employer increased by 55%. Applications to vary accreditations increased by 51%.

Applications disposed of decreased from 1980 in six categories, applications to vary certifications, for decertification, for accreditation, for the appointment of an officer to settle a grievance, for an interpretation of the Labour Code as it applies to the collective bargaining relationship and for first contract arbitration. One category remained unchanged.

C. General Information

In addition to the figures shown in the following tables, in 1981, the Board, of its own motion, made 229 decisions. Most of these were administrative and no employees were deprived

of bargaining rights as a result of these decisions. Breaking down the 229 decisions, 119 were to vary certifications, 59 were to cancel or override certifications, 13 were to vary accreditations, and the remaining 38 were decisions made under various other Sections of the Code.

Supervision of Strike and Lockout Polls

In 1980, 44,551 employees cast ballots in strike votes and 523 employers in lockout votes. In 1981, 85,228 employees and 233 employers cast such ballots.

Votes

For applications disposed of in 1981, 92 votes were conducted.

Fifty-five of the votes involved applications for certification, 53 of these involved only one application for certification, and two involved two such applications.

The 55 votes involved 57 certification applications. Thirty-two of these applications, involving 911 eligible voters, were filed under Section 39(1) or under 39(2) where the application was unopposed or was an attempt to fragment an existing unit. Of these, 9 (or 39%) produced a certification. Of the 35 contested applications under Section 39(2), the Board ordered votes for 25 applications, involving 3137 eligible voters, and the applicant won 18 (or 72%) of them. (See Table 9.)

Three votes involved variances of certifications to extend the presently certified bargaining units. One vote involved a variance application by one union to represent all employees in a unit presently represented by it and another union through a joint certification. There were no votes involving dependent contractors.

Twenty-three votes (ordered under Section 52) involved decertifications only. One vote involved a decertification application and a successorship application.

Four votes involved successorship applications only.

Four votes involved appeals of certification decisions and one vote, an appeal of a decertification decision.

Hearings

Records indicate there were 420 formal hearings held in 1981. These hearings dealt with a varying number and type of applications and were conducted over a varying number of days.

Numerous informal meetings between the parties to a dispute and various employees of the Board were held during the year. In the majority of cases, it was not necessary for the Board to proceed with a formal hearing following those meetings.

Certifications

Tables 7, 8 and 9 outline the results of the certification applications which were disposed of by the Board in 1981. Applying the criteria outlined in Table 8, in 1981 the percentage of successful applications to certify unorganized employees was 96%.

In 1981, two certifications were granted under Section 8(4)(e) but none under Section 43(3). Two certifications were granted following an appeal.

There were 49 applications in 1981 to vary certifications so as to expand the bargaining unit; 37 of these were granted adding 672 employees to existing certifications. Votes were held to decide three of these applications. The employees voted for the variance in all three cases.

Two of the 49 applications were expansions to include dependent contractors. Both were rejected without a vote.

There were 68 applications to cancel certifications. Of the 53 cancellations granted, 25 were opposed by the certified unions and/or by some employees in the bargaining unit. For 18 of these applications, the employees voted to cancel the certification. The Board of its own motion cancelled or overrode 59 certifications for administrative reasons. None of these resulted in a loss of bargaining rights for the employees involved.

In addition to the above, five certifications were cancelled following appeals.

There were 449 applications regarding successor status. While the vast majority of these asked for a declaration of successor rights a few dealt with such other issues as seniority rights or collective agreement status. For 241 of the 449 applications, one union would be succeeding another; 240 of these were granted and one was rejected. For the remaining 208, one employer would be succeeding another; 178 of these were granted, nine were rejected and 21 were withdrawn.

D. Miscellaneous

Table 2 indicates 882 miscellaneous decisions disposed of by the Board in 1981. These include the following.

In August of 1980, the Board assumed the functions of the Public Service Adjudication Board (that board being dissolved). In 1981, 722 of the 882 applications related to these functions.

There were 74 applications under Section 28 (excluding applications pertaining to Part 5 of the Code). These included 22 applications alleging that the terms and conditions of employment had been altered in violation of the Code, 29 applications alleging failure to execute or comply with a collective agreement and eleven alleging improper conduct in the negotiation of a collective agreement under Section 63 of the Code. The balance alleged violations of various other Sections of the Code.

Nine applications for religious exemption were disposed of. Eight of these were granted by the Board and one was withdrawn.

The Board disposed of 37 applications where one of the parties felt there had been an undue delay in negotiating a disputed issue. All of these were settled without a Board decision.

Fourteen applications for a declaratory opinion (excluding applications pertaining to Part 5 of the Code) were disposed of by the Board. In three of these cases, an opinion was issued.

The remaining 26 applications referred to a variety of Sections of the legislation administered by the Board.

ACHIEVEMENT OF A FIRST CONTRACT FOLLOWING CERTIFICATION

In the past six Annual Reports, data regarding the degree of success in achieving a first contract was outlined for certifications granted in the period January 1, 1974 to June 30, 1979.

This study has been continued for two more six-month periods -- July 1, 1979 to December 31, 1979 and January 1, 1980 to June 30, 1980.

As stated in the 1980 Report, data was again retrieved from three sources -- the collective agreement records of the Labour Relations Board and of the Ministry of Labour in Victoria, and a questionnaire sent to trade-unions regarding the status of bargaining.

The criteria for measuring the time elapsing remains the same. To compute the time required to achieve a contract, the time from the date of certification to the date of the signing

of the collective agreement was calculated. Where the signing date was not available, the date the agreement was received by the Labour Relations Board was used. In the few instances where neither date was available, it was assumed the contract was signed within seven to twelve months following certification.

Again, the results must be qualified by the fact that 10% of the certifications (12% in the 1980 Annual Report) and 5% of the employees (10% in the 1980 Annual Report) were omitted from the study because contract data was not available.

The following is a summary of the results of this study since it began January 1, 1974. It should be noted that a large proportion (67% in the periods studied for this Report) of the units which obtain a contract prior to certification are small construction industry units.

Certifications Granted To Unorganized Employees In	Percentage Achieving a Contract Prior to Certification		Percentage Without a Contract 18 Months After Certification	
	Units	Employees	Units	Employees
the 1st half of 1974	51.5%	52.0%	9.0%	4.5%
the 2nd half of 1974	35.4%	10.1%	10.6%	6.5%
the 1st half of 1975	40.6%	36.0%	13.0%	10.6%
the 2nd half of 1975	57.9%	48.6%	11.2%	11.0%
the 1st half of 1976	54.1%	51.9%	10.1%	4.0%
the 2nd half of 1976	45.5%	29.7%	15.3%	11.5%
the 1st half of 1977	49.1%	29.4%	12.3%	19.9%
the 2nd half of 1977	49.2%	26.7%	19.5%	32.5%
the 1st half of 1978	43.1%	27.6%	10.6%	18.3%
the 2nd half of 1978	41.2%	17.5%	17.5%	33.6%*
the 1st half of 1979	43.8%	24.1%	14.8%	16.3%
the 2nd half of 1979	38.0%	17.4%	15.5%	25.3%
the 1st half of 1980	42.7%	18.8%	11.8%	6.4%

* Another 22.1% of these employees had achieved a contract more than 18 months after certification but before the date of this report, (as had a certain, but much smaller percentage, in the other time periods).

FIRST CONTRACT ANALYSIS

CERTIFICATIONS GRANTED TO UNORGANIZED EMPLOYEES

	2ND HALF 1979	1ST HALF 1980
Number of Certifications Granted:	255	270
Less Certifications Where No Contract Information Was Available:	29	24
Number of Certifications in Study:	226	246
Number of Employees Covered by Above Certifications:	3085	4103
Less Employees for Whom No Contract Information Was Available:	203	184
Number of Employees Studied:	2882	3919

PERIOD OF TIME TO ACHIEVE A FIRST CONTRACT

	2ND HALF 1979	1ST HALF 1980	2ND HALF 1979	1ST HALF 1980
Achieving a Contract	Number of Bargaining Units		Percentage of Bargaining Units	
Prior to Certification	86	105	38.0%	42.7%
Within 6 Months of Certification	128	154	56.6%	62.6%
Within 12 Months of Certification	170	201	75.2%	81.7%
Within 18 Months of Certification	191	217	84.5%	88.2%
Balance Remaining Without a First Contract, 18 Months After Certification	35	29	15.5%	11.8%
Achieving a Contract	Number of Employees		Percentage of Employees	
Prior to Certification	501	735	17.4%	18.8%
Within 6 Months of Certification	1224	1461	42.5%	37.3%
Within 12 Months of Certification	1954	3421	67.8%	87.3%
Within 18 Months of Certification	2153	3667	74.7%	93.6%
Balance Remaining Without a First Contract, 18 Months After Certification	729	252	25.3%	6.4%

FIRST CONTRACT ANALYSIS

DATA REGARDING THE STATUS OF NEGOTIATIONS, 18 MONTHS FOLLOWING CERTIFICATION, OF THE REMAINING BARGAINING UNITS AND EMPLOYEES, INDICATES THE FOLLOWING:

	Number of Bargaining Units		Number of Employees	
	2ND HALF 1979	1ST HALF 1980	2ND HALF 1979	1ST HALF 1980
Certification was cancelled	9	9	172	126
Contract was achieved after 18 months elapsed	12	7	367	37
Negotiations proceeding	1	0	2	0
Negotiations stalled	7	3	48	9
There are presently no employees in the bargaining unit	1	0	32	0
Employer temporarily closed down	0	1	0	6
Employer has gone out of business	5	7	108	50
Rejection of strike by vote	0	1	0	19
Certification under appeal	0	1	0	5

TABLE 1

APPLICATIONS AND COMPLAINTS FILED 1980-1981

	TYPE OF APPLICATION	1980	1981
I.	Certification		
	Applications	802	900
	Variances	446	713
	Cancellations	94	57
II.	Accreditation		
	Applications	2	1
	Variances	*33	**52
	Cancellations	0	0
III.	Declaration of Successor Status	199	421
IV.	Appointment of an Officer to resolve a dispute where a collective agreement is in effect	552	578
V.	Complaints of Unfair Labour Practices	241	292
VI.	To alter Conditions of Employment	34	44
VII.	A request for an Interpretation of the Labour Code as it applies to the collective bargaining relationship	411	261
VIII.	For a Board inquiry to settle the terms and conditions of a First Collective Agreement	2	2
IX.	For a Board Order or opinion pertaining to alleged illegal strikes, lockouts and/or picketing	305	573
X.	To treat several entities as one employer	25	58
XI.	For a review of an arbitration award	46	51
XII.	Miscellaneous	430	890
XIII.	For Reconsideration of a decision	133	173
XIV.	For the appointment of an observer of a strike or lockout poll	664	938
	TOTAL	4419	6004

* To add 72 employers, to delete 6 employers, to vary the names and/or addresses of 16 employers and to vary the names and/or addresses of 5 associations.

** To add 153 employers, to delete 11 employers and to vary the names and/or addresses of 7 employers.

Note: For further elaboration of the figures in Table 1, refer to the Statistical Appendix.

TABLE 2

APPLICATIONS AND COMPLAINTS DISPOSED OF 1980-1981

	TYPE OF APPLICATION	1980	1981
I.	Certification		
	Applications	790	848
	Variances	413	365
	Cancellations	89	68
II.	Accreditation		
	Applications	2	1
	Variances	*37	**56
	Cancellations	0	0
III.	Declaration of Successor Status	246	449
IV.	Appointment of an Officer to resolve a dispute where a collective agreement is in effect	565	495
V.	Complaints of Unfair Labour Practices	247	283
VI.	To alter Conditions of Employment	36	45
VII.	A request for an Interpretation of the Labour Code as it applies to the collective bargaining relationship	362	292
VIII.	For a Board inquiry to settle the terms and conditions of a First Collective Agreement	2	0
IX.	For a Board Order or opinion pertaining to alleged illegal strikes, lockouts and/or picketing	312	567
X.	To treat several entities as one employer	33	51
XI.	For a review of an arbitration award	47	49
XII.	Miscellaneous	441	882
XIII.	For Reconsideration of a decision	140	171
XIV.	For the appointment of an observer of a strike or lockout poll	664	938
	TOTAL	4426	5560

* 67 employers were added to accreditations, 4 were deleted, the names and/or addresses of 15 employers were varied and the names and/or addresses of 4 associations were varied. The deletions of 7 employers were denied. Requests to add 2 employers, to delete 20 employers, and to vary the name of one employer were withdrawn.

** 152 employers were added to accreditations, 5 were deleted and the names and/or addresses of 9 employers and the name of one association were varied. Requests to delete 5 employers were denied. Requests to delete 3 employers were withdrawn.

Note: For further elaboration of the figures in Table 2, refer to the Statistical Appendix.

TABLE 3

APPLICATIONS AND COMPLAINTS DISPOSED OF THAT WERE DEALT WITH AT A FORMAL HEARING AND/OR WERE DEALT WITH IN A FORMAL BOARD DECISION 1980-1981

	TYPE OF APPLICATION	NO./APPLICATIONS AT FORMAL HEARINGS		NO./APPLICATIONS IN FORMAL DECISIONS*	
		1980	1981	1980	1981
I.	Certification				
	Applications	21	45	3	18
	Variances	2	10	3	3
	Cancellations	5	4	3	3
II.	Accreditation				
	Applications	1	0	1	0
	Variances	7	1	3	0
	Cancellations	0	0	0	0
III.	Declaration of Successor Status	10	69	2	8
IV.	Appointment of an Officer to resolve a dispute where a collective agreement is in effect	15	21	5	1
V.	Complaints of Unfair Labour Practices	56	96	11	20
VI.	To alter Conditions of Employment	0	1	0	0
VII.	A request for an Interpretation of the Labour Code as it applies to the collective bargaining relationship	62	27	12	10
VIII.	For a Board inquiry to settle the terms and conditions of a First Collective Agreement	2	0	0	0
IX.	For a Board Order or opinion pertaining to alleged illegal strikes, lockouts and/or picketing	99	259	23	46
X.	To treat several entities as one employer	8	20	3	3
XI.	For a review of an arbitration award	8	9	9	7
XII.	Miscellaneous	44	40	13	6
XIII.	For Reconsideration of a decision	35	44	16	19
	TOTAL	375	646	107	144

* Does not include letter decisions.

Note: The Board may deal with more than one application and/or complaint at one formal hearing. In 1981, the Board held 420 formal hearings.

TABLE 4

APPLICATIONS AND COMPLAINTS DISPOSED OF BY TYPE AND DISPOSITION 1980-1981

TYPE OF APPLICATION		1980	1981
I. Certification			
Applications:	Granted	593	643
	Rejected	62	91
	Withdrawn	135	114
Variances:	Granted	373	310
	Rejected	10	21
	Withdrawn	30	34
Cancellations:	Granted	51	53
	Rejected	27	11
	Withdrawn	11	4
II. Accreditations			
Applications:	Granted	1	1
	Rejected	1	0
	Withdrawn	0	0
Variances:	Granted	26	48
	Rejected	7	5
	Withdrawn	4	3
Cancellations:	Granted	0	0
	Rejected	0	0
	Withdrawn	0	0
III. Declaration of Successor Status			
	Granted	215	418
	Rejected	21	10
	Withdrawn	10	21
IV. Appointment of an Officer to resolve a dispute where a collective agreement is in effect			
	Settled	397	339
	Orders Issued	39	50
	Referred Back to Parties	118	97
	Not Arbitrable	2	2
	Withdrawn	9	7
V. Complaints of Unfair Labour Practices			
	Settled	154	198
	Orders Issued	24	25
	Rejected	68	60
	Withdrawn	1	0
VI. To alter Conditions of Employment			
	Granted	24	25
	Rejected	2	8
	Withdrawn	10	12
VII. A Request for an Interpretation of the Labour Code as it applies to the collective bargaining relationship			
	Ruling Made	304	237
	Withdrawn	58	55
	Held in Abeyance	0	0

cont'd.

TABLE 4 CONT'D.

APPLICATIONS AND COMPLAINTS DISPOSED OF BY TYPE AND DISPOSITION 1980-1981

	TYPE OF APPLICATION	1980	1981
VIII.	For a Board inquiry to settle the terms and Conditions of a First Collective Agreement		
	Settled	1	0
	Contract Imposed	1	0
	Rejected	0	0
	Withdrawn	0	0
IX.	For a Board Order or opinion pertaining to alleged illegal strikes, lockouts and/or picketing		
	Settled	225	368
	Order or Opinion Issued	59	137
	Rejected	28	62
	Withdrawn	0	0
X.	To treat several entities as one employer		
	Granted	6	12
	Rejected	13	11
	Withdrawn	14	28
XI.	For a review of an Arbitration Award		
	Granted	11	6
	Rejected	31	37
	Withdrawn	5	6
XII.	Miscellaneous		
	Settled	81	92
	Decision Made	354	777
	Withdrawn	6	13
XIII.	For Reconsideration of a decision		
	Dismissed	76	100
	Varied	29	24
	Reversed	17	13
	Withdrawn	18	34
XIV.	For the Appointment of an Observer of a strike or lockout poll	664	938
	TOTAL	4426	5560

Note: The category "Orders Issued" includes all Board rulings that a violation occurred, that a penalty should be reduced, or that a specific activity should be restricted. Formal orders were not necessarily issued.

The category "Rejected" includes decisions where the Board deems no violation of the Labour Code has occurred as well as decisions where the Board determines no further action is warranted.

TABLE 5

APPLICATIONS FOR CERTIFICATION FILED 1980-1981

INDUSTRY CODE		NUMBER OF APPLICATIONS		NUMBER OF EMPLOYEES*	
		1980	1981	1980	1981
I.	Manufacturing				
101	Food & Beverage	20	17	935	1673
102	Wood Products	30	25	1162	1134
103	Metals (Refining and Fabrication)	26	37	794	708
104	Machinery, Transportation Equipment, Electrical Products	10	13	377	1332
105	Miscellaneous	100	66	1668	1193
	Sub-Total	186	158	4937	6040
II.	Construction	308	386	1601	2414
III.	Trade and Service				
301	Trade	56	67	633	941
302	Education & Health	61	57	1270	2057
303	Municipal	8	8	79	76
304	Miscellaneous	136	181	2814	2503
	Sub-Total	261	313	4796	5577
IV.	Other Industries				
401	Mining	11	13	1140	5327
402	Transportation	33	30	3155	3050
403	Communication & Other Utilities	3	0	371	0
	Sub-Total	47	43	4666	8377
	TOTAL**	802	900	16000#1	22408#2

* The estimate of employees per application is derived from the estimate on the union application. Variations do occur between the time of application and the time of disposal of the application.

** Includes some multiple counting where more than one union applied to cover the same group of employees.

#1 By December 31, 1980, applications involving 3688 employees had been withdrawn.

#2 By December 31, 1981, applications involving 854 employees had been withdrawn.

APPENDIX TO TABLE 5

NUMBER OF EMPLOYEES IN BARGAINING UNIT 1980-1981

NUMBER OF EMPLOYEES PER BARGAINING UNIT APPLIED FOR	NUMBER OF APPLICATIONS FILED 1980	1981
0 - 10	539	644
11 - 20	120	122
21 - 30	54	44
31 - 40	23	24
41 - 50	18	21
51 - 60	4	6
61 - 70	9	6
71 - 80	8	4
81 - 90	3	2
91 - 100	3	2
101 - 200	11	12
201 - 300	4	3
Over 300	6	10
Median class of employees per unit applied for:	0 - 10	0 - 10
Average number of employees per bargaining unit applied for:	20	25

TABLE 6

APPLICATIONS FOR CERTIFICATION GRANTED 1980-1981

INDUSTRY CODE		NUMBER OF APPLICATIONS		NUMBER OF EMPLOYEES*	
		1980	1981	1980	1981
I.	Manufacturing				
101	Food & Beverage	14	5	747	115
102	Wood Products	26	18	675	633
103	Metals (Refining and Fabrication)	17	29	166	189
104	Machinery, Transportation Equipment, Electrical Products	5	9	284	486
105	Miscellaneous	68	50	901	1075
	Sub-Total	130	111	2773	2498
II.	Construction	237	282	1086	1669
III.	Trade and Service				
301	Trade	48	50	650	603
302	Education & Health	46	47	1872	1293
303	Municipal	5	5	103	24
304	Miscellaneous	99	124	2126	1993
	Sub-Total	198	226	4751	3913
IV.	Other Industries				
401	Mining	4	4	58	130
402	Transportation	22	20	347	752
403	Communication & Other Utilities	2	0	93	0
	Sub-Total	28	24	498	882
	TOTAL	593	643	9108	8962

* The estimate of employees per application is derived from the estimate on the union application. Variations do occur between the time of application and the time of disposal of the application.

TABLE 7

CERTIFICATIONS REJECTED IN 1981

TYPE OF APPLICATION	NUMBER OF APPLICATIONS	NUMBER OF EMPLOYEES
A. Organized Employees		
1. Employees to be included in a larger unit already represented by applicant union	5	64
2. Less than a majority were union members at the date of application	2	86
3. Applicant union rejected by employee vote	8	1219
4. Application untimely	1	9
5. Bargaining unit inappropriate	11	1405
6. Applicant does not meet the definition of a trade union	2	40
Sub-Total	29	2823
B. Unorganized Employees		
1. Bargaining unit not under the jurisdiction of the Board	0	0
2. Less than 2 employees in the bargaining unit	4	N/A
3. Employees to be included in a larger unit already represented	12	168
4. Employees to be included in a larger unit not yet (but subsequently) represented	0	0
5. Less than the legal membership requirement signed up by the union at the date of application	6	108
6. Employees voted for no union	20	453
7. Employees voted for certification of another union	2	146
8. Bargaining unit inappropriate	12	124
9. Applicant does not meet the definition of a trade union	6	123
Sub-Total	62	1122
TOTAL	91	3945

cont'd.

TABLE 7 CONT'D.

CERTIFICATION REJECTED IN 1981

	1981
C. Number of Certification Applications Disposed of:	848
Less: Applications Withdrawn	
Applications to cover Presently organized employees	
Applications not under the jurisdiction of the Board	
Applications for an inappropriate bargaining unit	
Applications where employees are or will be represented through another certification	
Net	648
D. Certification Applications for Unorganized Employees Rejected Because of:	
Failure to meet membership requirements, or	
An employee vote against the union	26
D as a percentage of C:	4%

TABLE 8

CERTIFICATION APPLICATIONS DECIDED BY THE BOARD IN 1981

APPLICATIONS	GRANTED	REJECTED	TOTAL
Unorganized Employees	622	62	684*
Organized Employees	21	29	50
TOTAL	643	91	734

* Deleting the 36 applications for unorganized employees which were rejected because they did not come under the jurisdiction of the Board, because the employees involved were represented through another certification, because the bargaining unit was inappropriate or because the applicant did not meet the definition of a trade union, the percentage of successful applications to certify unorganized employees can be expressed as 622 out of 648 or 96%.

NUMBER OF EMPLOYEES	GRANTED	REJECTED	TOTAL
Unorganized Employees	7095	1122	8217
Organized Employees	1867	2823	4690
TOTAL	8962	3945	12907

ATTEMPTS BY ANOTHER UNION TO REPLACE AN INCUMBENT UNION	SUCCESSFUL	UNSUCCESSFUL	TOTAL
Number of Attempts	18*	17	35
Number of Employees Involved	1852*	2575**	4427***

* For 3 of the successful attempts, involving 21 employees, rather than grant a new certification, an existing certification with the successful union was varied to include these employees.

** For 4 applications, involving 10, 150, 400 and 600 employees respectively, there was considerable overlapping in the employees for whom application was made. All 4 applications were dismissed on the basis the units were inappropriate.

*** The balance of the organized employees were involved in unopposed representation changes or attempts to enlarge or fragment existing bargaining units.

TABLE 9

CERTIFICATION APPLICATIONS RESULTING IN A VOTE IN 1981

A.	Number of applications pertaining to unorganized employees or to organized employees where the representation change was unopposed or was an attempt to fragment or enlarge a unit, which resulted in a vote	32 out of 699* or 5%
	Number of successful applications	9
	Number of unsuccessful applications	23
	Percentage of successful applications	39%
	Total number of eligible voters involved in the 32 applications**	911
B.	Number of applications involving attempts by another union to replace an incumbent union, which resulted in a vote	25 out of 35 or 71%
	Number of successful applications	18
	Number of unsuccessful applications	7
	Percentage of successful applications	72%
	Total number of eligible voters involved in the 25 applications**	3137

* A total of 734 new certification applications were decided upon by the Board in the report year 1981. Of these, 35 applications involved attempts by a union to win the right to represent a bargaining unit already actively represented by another union.

** This figure can vary from the number of employees originally applied for. In some cases, two or more applications were received resulting in one vote and thus one group of eligible voters.

TABLE 10

APPLICATIONS FOR THE APPOINTMENT OF AN OFFICER TO SETTLE A GRIEVANCE UNDER AN EXISTING COLLECTIVE AGREEMENT DISPOSED OF 1980-1981

	NATURE OF DISPOSITION	NUMBER OF APPLICATIONS 1980	1981
A.	Settled		
	1. Issue disputed:		
	(a) advantage to union	233	193
	(b) advantage to employer	71	59
	(c) advantage not decisive	43	34
	(d) advantage unknown	27	28
	2. Issue not disputed	23	25
	Sub-Total	397	339
B.	Orders Issued		
	1. Issue disputed:		
	(a) advantage to union	22	22
	(b) advantage to employer	15	24
	2. Issue not disputed	2	4
	Sub-Total	39	50
C.	Referred Back		
	(All issues disputed; advantage unknown)	118	97
D.	Not Arbitrable		
	(All issues disputed; advantage to the employer)	2	2
E.	Withdrawn	9	7
	TOTAL	565	495
	Summary		
	1. Issue disputed		
	(a) advantage to union	255	215
	(b) advantage to employer	88	85
	(c) advantage not decisive	43	34
	(d) advantage unknown	145	125
	Sub-Total	531	459
	2. Issue not disputed	25	29
	3. Withdrawn	9	7
	TOTAL	565	495

Notes: "Orders Issued" includes all decisions by the Board finalizing a grievance, even though a formal Order may not have been issued.

The advantage goes to the trade-union if they gain anything at all from filing the application.

"Not decisive" includes those withdrawn because it was decided to process the grievance through other means, e.g., under the Payment of Wages Act.

"Not Disputed" covers those situations where the employer acknowledges the legitimacy of the grievance but is unable to settle because of financial difficulties.

TABLE 11

APPLICATIONS FOR THE APPOINTMENT OF AN OFFICER TO SETTLE A GRIEVANCE UNDER AN EXISTING COLLECTIVE AGREEMENT DISPOSED OF IN 1981

	GRIEVANCE PERTAINED PRINCIPALLY TO*	NUMBER OF APPLICATIONS
1.	Dismissal or suspension	122
2.	Wages	103
3.	Contributions for fringe benefits	36
4.	Use of non-union personnel (including subcontractors)	35
5.	Lay-off	28
6.	Reprimand	25
7.	Promotion	19
8.	Hours of work (including vacations, leaves of absence)	17
9.	Work expenses	13
10.	Sickness and accident benefits	12
11.	Allocation of work	12
12.	Jurisdiction	9
13.	Seniority	8
14.	Job classification	6
15.	Union membership	6
16.	Union dues	6
17.	General collective agreement compliance	5
18.	Work environment	5
19.	Demotion	4
20.	Job action	4
21.	Work assignment	4
22.	Job posting	3
23.	Hiring policy	3
24.	Grievance procedure	2
25.	Training	2
26.	Temporary assignment of duties outside grievor's classification	1
27.	Bereavement leave	1
28.	Union business	1
29.	Job evaluation	1
30.	Transfer	1
31.	Disciplinary program	1

* Frequently an application indicated more than one type of grievance involved. However, for the above analysis, the apparent major cause of the dispute was chosen to characterize the application.

TABLE 12

APPLICATIONS FOR THE APPOINTMENT OF AN OFFICER TO SETTLE A GRIEVANCE UNDER AN EXISTING COLLECTIVE AGREEMENT DISPOSED OF IN 1981

	INDUSTRY CODE		FILED BY UNION	FILED BY EMPLOYER	TOTAL
I.	Manufacturing				
	101	Food & Beverage	9	0	9
	102	Wood Products	27	0	27
	103	Metals (Refining and Fabrication)	35	0	35
	104	Machinery, Transportation Equipment, Electrical Products	31	0	31
	105	Miscellaneous	36	2	38
		Sub-Total	138	2	140
II.	Construction		81	6	88**
III.	Trade and Service				
	301	Trade	28	1	29
	302	Education & Health	31	12	45**
	303	Municipal	14	3	17
	304	Miscellaneous	101	2	103*
		Sub-Total	174	18	194
IV.	Other Industries				
	401	Mining	45	5	50
	402	Transportation	22	0	22
	403	Communication and Other Utilities	1	0	1
		Sub-Total	68	5	73
		TOTAL	461	31	495

* 73 of these originated in the hotel, restaurant and beverage dispensing industry.

** Two applications were filed jointly by a union and an employer and one was filed by an accredited employers' association.

cont'd.

TABLE 12 CONT'D.

APPLICATIONS FOR THE APPOINTMENT OF AN OFFICER TO SETTLE A GRIEVANCE UNDER AN EXISTING COLLECTIVE AGREEMENT DISPOSED OF IN 1981

ANALYSIS OF APPLICATIONS FILED BY AN EMPLOYER

EMPLOYER NAME	NUMBER OF APPLICATIONS
Kelowna and District Society for the Mentally Retarded	9
Canada Wide Mines Ltd.	3
Columbia Hydro Constructors Ltd.	3
Compac Construction Ltd.	2
School District No. 36 (Surrey)	2
Western Mines Ltd.	2
A.A.A. Rentagard Canada Ltd.	1
City of Dawson Creek	1
Grantrick Foods Ltd.	1
Lake Redi-Mix Ltd.	1
Maple Ridge Hospital Association	1
District of North Cowichan	1
Pacific Auto Plas Industries Ltd.	1
City of Penticton	1
Skyline Airport Hotel	1
Wakeman & Trimble Contractors Ltd.	1
TOTAL	31

ANALYSIS OF APPLICATIONS FILED BY UNIONS AGAINST EMPLOYERS

Number of employers subject to 1 application	256
2 applications	35
3 applications	12
4 applications	6
5 applications	1
6-10 applications	5
11-15 applications	0
more than 15 applications	1
Total employers	316
Total applications	461

TABLE 13

APPEALS DISPOSED OF IN 1981

	TYPE OF DECISION BEING RECONSIDERED	DISMISSED	VARIED	REVERSED	WITHDRAWN	TOTAL
1.	Certification	30	7	2	4	43
2.	Vote re: certification	0	0	1	1	2
3.	Appeal of certification	2	0	0	2	4
4.	Vote re: appeal of certification	4	0	0	0	4
5.	Appeal of certification re: jurisdiction	1	0	0	0	1
6.	Appeal of an appeal of certification	0	1	0	0	1
7.	Vote re: an appeal of an appeal of certification	0	0	1	1	2
8.	Variance of certification	3	0	0	1	4
9.	Cancellation of certification	1	2	0	0	3
10.	Vote re: cancellation of certification	1	0	0	0	1
11.	Accreditation	0	0	0	1	1
12.	Variance of accreditation	0	0	1	0	1
13.	Declaration of successor status	6	0	1	1	8
14.	Appeal of a declaration of successor status	1	0	0	0	1
15.	The disposition of a grievance under an existing collective agreement	2	1	0	2	5
16.	Unfair labour practice adjudication	7	3	2	3	15
17.	Appeal of unfair labour practice adjudication	2	0	0	0	2
18.	A Board ruling re: an interpretation of the Labour Code as it applies to the collective bargaining relationship	10	4	3	6	23
19.	Appeal of a Board ruling re: an interpretation of the Labour Code as it applies to the collective bargaining relationship	3	1	0	2	6

cont'd.

TABLE 13 CONT'D.

APPEALS DISPOSED OF IN 1981

	TYPE OF DECISION BEING RECONSIDERED	DISMISSED	VARIED	REVERSED	WITHDRAWN	TOTAL
20.	A Board ruling re: more than one corporate entity being considered as one employer	1	0	0	0	1
21.	A Board ruling pertaining to alleged illegal strikes, lockouts and/or picketing	18	4	2	9	33
22.	A Board review of an arbitration award	3	0	0	0	3
23.	A Board ruling under the Essential Services Disputes Act	1	0	0	1	2
24.	A Board ruling re: an arbitration board	1	0	0	0	1
25.	A Board ruling re: collective bargaining	1	0	0	0	1
26.	A Board ruling re: procedure	1	0	0	0	1
27.	A Board ruling re: the terms of a Board order	0	1	0	0	1
28.	A Board ruling re: the awarding of damages	1	0	0	0	1
	TOTAL	100	24	13	34	171

	APPELLANT(S)	DISMISSED	VARIED	REVERSED	WITHDRAWN	TOTAL
1.	Employer	49	9	8	16	82
2.	Union	38	11	4	10	63
3.	Employee(s)	12	3	0	3	18
4.	Employer and Union	0	1	0	1	2
5.	Union and Employees	1	0	0	0	1
6.	Employer Association	0	0	1	4	5
	TOTAL	100	24	13	34	171

TABLE 14

APPLICATIONS FOR A BOARD ORDER OR OPINION PERTAINING TO ALLEGED ILLEGAL STRIKES, LOCKOUTS, AND/OR PICKETING DISPOSED OF IN 1981

TYPE OF APPLICATION	NUMBER OF APPLICATIONS	AT A FORMAL HEARING	IN A FORMAL DECISION*
A. Dispute settled by an investigating officer or a Panel of the Board			
1. re alleged lockout	5	2	0
2. re alleged strike	78	16	0
3. re alleged strike and picketing	37	8	0
4. re picketing	228	32	0
5. re activity affecting business, etc. (S.90)	20	9	0
Sub-Total	368	67	0
B. Dispute disposed of by a Board adjudication that a violation had occurred or would occur or that a specific activity should be restricted			
1. re alleged strike**			
- work stoppage	25	22	1
- refusal to perform certain duties	6	5	0
2. re alleged strike*** and picketing			
- work stoppage	15	15	1
3. re picketing****			
- alleged secondary location of a struck employer	22	21	3
- ally	21	20	2
- organizational	1	1	0
- common site	38	38	8
- other	4	4	0
4. re activity affecting business, etc. (S.90)	5	5	2
Sub-Total	137	131	17

Note: Due to an unusually heavy volume of formal applications and complaints under Part 5 of the Labour Code, the Board was able to deal with only a very few complaints informally in 1981.

* Does not include letter decisions.

** Includes two Consent Orders and one adjudication with conditions.

*** Includes one Consent Order and two adjudications with conditions.

**** Includes four Consent Orders and 31 adjudications with conditions.

TABLE 14 CONT'D.

APPLICATIONS FOR A BOARD ORDER OR OPINION PERTAINING TO ALLEGED ILLEGAL STRIKES, LOCKOUTS, AND/OR PICKETING DISPOSED OF IN 1981

TYPE OF APPLICATION	NUMBER OF APPLICATIONS	AT A FORMAL HEARING	IN A FORMAL DECISION*
C. Dispute disposed of: (a) by a Board adjudication that no violation had occurred or would occur or that a specific activity should not be restricted, or (b) by the Board refusing to rule on the proceedings			
1. re alleged lockout	1	1	1
2. re alleged strike			
- work stoppage	5	5	1
3. re picketing			
- alleged secondary location of a struck employer	18	18	4
- ally	2	2	1
- common site	28	28	16
- other	3	2	2
4. re activity affecting business, etc. (S.90)	5	5	2
Sub-Total	62	61	27
TOTAL	567	259	44

* Does not include letter decisions.

Note: The applications in Table 14 include those filed to avert threatened strikes, lockouts, and/or picketing (through a declaratory opinion, a jurisdictional decision, etc.) as well as those protesting some form of actual job action.

TABLE 15

APPLICATIONS FOR A BOARD ORDER OR OPINION PERTAINING TO ALLEGED ILLEGAL STRIKES, LOCKOUTS, AND/OR PICKETING DISPOSED OF IN 1981

	INDUSTRY CODE*		FILED BY EMPLOYER(S)**	FILED BY UNION	TOTAL
I.	Manufacturing				
	101	Food & Beverage	6	0	6
	102	Wood Products	92	1	93
	103	Metals (Refining and Fabrication)	8	0	8
	104	Machinery, Transportation Equipment, Electrical Products	8	0	8
	105	Miscellaneous	47	0	47
		Sub-Total	161	1	162
II.	Construction		203	1	204
III.	Trade and Service				
	301	Trade	47	1	48
	302	Education and Health	11	0	11
	303	Municipal	23	0	23
	304	Miscellaneous	73	2	75
		Sub-Total	154	3	157
IV.	Other Industries				
	401	Mining	16	0	16
	402	Transportation	16	4	20
	403	Communication and Other Utilities	8	0	8
		Sub-Total	40	4	44
		TOTAL	558	9	567

* Based on applicant's type of business.

** Not necessarily the employer of the respondents.

TABLE 16

APPLICATIONS FILED IN 1981 ANALYZED BY UNION

UNION NAME (Names have been abbreviated. Where possible, the commonly-used, shortened form appears.)	CERTIFICATION APPLICATIONS FILED BY	DECERTIFICATION APPLICATIONS FILED AGAINST	UNFAIR LABOUR PRACTICE COMPLAINTS FILED BY	APPOINTMENT OF AN OFFICER APPLICATIONS FILED BY
Boilermakers	7	0	1	1
Bricklayers	0	0	0	5
C.L.A.C.	3	0	0	1
Can. Construction & Industrial Union	0	1	0	2
Carpenters	167	1	8	44
Cement Workers	0	0	0	1
Electrical Workers	17	3	4	5
Elevator Constructors	1	0	0	0
Glaziers & Glass Workers	16	2	4	6
Iron Workers	65	0	2	16
Labourers	92	0	13	24
Machinists & Aerospace Workers	7	2	2	12
Operating Engineers	71	4	7	18
Painters	36	1	2	8
Plasterers	8	0	1	4
Plumbers	8	2	1	3
Sheet Metal Workers	34	0	1	13
Tilesetters	10	0	0	1
C.P.U.	3	0	1	1
I.W.A.	24	5	9	13
P.P.W.C.	3	0	1	38
B.C. Ferry & Marine Workers	0	0	0	1
Railway Clerks	1	0	0	1
Shipyard Workers	7	1	0	4
Teamsters	71	6	27	13
Transit Union (ATU)	1	0	0	3
Transit Union (ICTU)	2	0	0	0
Transport & General Workers	4	0	1	0
Western Transportation Union	1	0	0	0
Association of Professional Security Personnel	1	0	0	0
Directors Guild	1	0	0	0
Service Employees	19	1	0	19
Service, Office, Retail Workers	3	0	6	0
Theatrical Stage Employees et al	2	1	2	0

cont'd.

TABLE 16 CONT'D.

APPLICATIONS FILED IN 1981 ANALYZED BY UNION

UNION NAME (Names have been abbreviated. Where possible, the commonly-used, shortened form appears.)	CERTIFICATION APPLICATIONS FILED BY	DECERTIFICATION APPLICATIONS FILED AGAINST	UNFAIR LABOUR PRACTICE COMPLAINTS FILED BY	APPOINTMENT OF AN OFFICER APPLICATIONS FILED BY
Fire Fighters	5	0	2	1
Police Officers	2	0	0	2
Hotel Employees	40	7	20	83
Health Sciences Association	3	0	0	2
Hospital Employees Union	30	0	7	1
Nurses	11	1	3	1
Psychiatric Nurses	2	0	0	1
Residents & Interns	1	0	0	0
Clothing Workers	4	0	1	0
Graphic Arts	4	0	2	0
Newspaper Guild	1	0	2	1
Printing and Graphic Communication	1	0	1	0
Typographical Union	0	2	1	0
Auto Workers	1	0	0	0
CAIMAW	10	1	17	5
CASAW	1	0	0	0
Energy & Chemical Workers	1	1	1	1
Mine Workers	1	0	1	1
Steelworkers	13	0	6	96
Food & Commercial Workers	12	5	5	21
Retail, Wholesale Employees	6	0	6	1
Brewery Workers	3	1	0	0
Can. Farmworkers Union	4	0	1	1
Food & Service Workers	1	2	1	0
Fruit & Vegetable Workers	3	0	0	0
General Farm & Allied Workers	5	0	1	0
United Fishermen	3	0	0	4
A.C.T.E.	0	1	0	0
C.U.P.E.	9	1	8	38
O.T.E.U.	6	2	3	4
Telecommunication Workers	1	0	0	0
Union of Bank Employees	4	0	0	0

cont'd.

TABLE 16 CONT'D.

APPLICATIONS FILED IN 1981 ANALYZED BY UNION

UNION NAME (Names have been abbreviated. Where possible, the commonly-used, shortened form appears.)	CERTIFICATION APPLICATIONS FILED BY	DECERTIFICATION APPLICATIONS FILED AGAINST	UNFAIR LABOUR PRACTICE COMPALINTS FILED BY	APPOINTMENT OF AN OFFICER APPLICATIONS FILED BY
B.C.G.E.U.	17	0	8	2
Vancouver Municipal & Regional Employees Union	0	0	1	1
A.U.C.E.	0	0	1	8
Faculty Association of the College of New Caledonia	0	0	1	1
Single Employer Independent Union	14	0	1	3
Employee(s)	0	0	84	0
Employer(s)	0	0	14	44
Employer Association (no specific employer)	0	0	0	1
TOTAL APPLICATIONS FILED	904*1	54*2	292	531*3

*1 Three applications were filed jointly, two by the Nurses and Psychiatric Nurses and one by the Labourers, Operating Engineers and Teamsters.

*2 Three applications were filed by unions.

*3 Three applications were filed jointly, one by the Nurses and Psychiatric Nurses and two by an employer and C.U.P.E.